TRANSCRIPT OF RECORD.

[illegible] COURT OF THE UNITED STATES.

No. 473

[illegible] APPELLANT,

vs.

[illegible] AND CHARLES POMEROY, [illegible] LAND OFFICE.

[illegible]

SUPREME COURT OF THE UNITED STATES.

No. 392.

EDWARD C. LITCHFIELD, COMPLAINANT,

vs.

CHARLES B. RICHARDS, REGISTER, & CHARLES POMEROY, RECEIVER OF THE UNITED STATES LAND OFFICE AT FORT DODGE, IOWA.

Appeal from the district of Iowa.

STATE OF IOWA, *Polk County, ss*:

John Browne of said county and State being duly sworn deposes and says: That he is the agent of the above-named complainant, and has charge of his property and estate in the State of Iowa. That he acted as the agent of complainant in looking up the facts stated in the bill in this action, and that the bill herein was verified by him

And this deponent further says, that the matter in dispute in this action exceeds the sum or value of two thousand dollars exclusive of costs; that the lands of thecomplaint set forth in the bill herein, as belonging to him, the pre-emption and homestead entry of which is sought to be restrained by the bill in this action, are of the actual value of more than one hundred thousand dollars.

And deponent further says, that the statements hereinabove contained, are made and based upon his personal knowledge; that he is acquainted with the said lands of complainant in the bill herein described, and knows their quality, situation, location and condition.

JOHN BROWNE.

Subscribed and sworn to by John Browne, before me, John D. Rivers, a notary public of Polk county, and State of Iowa, this 26th day of Dec., A. D. 1868, as witness my hand and notarial seal, at Des Moines, in said county, the 26th day of Dec., 1868.

[SEAL.] JOHN O. RIVERS,

Notary Public, Polk County, Iowa.

Supreme Court of the United States.

Appeal from the Circuit Court of the district of Iowa.

EDWIN C. LITCHFIELD, complain't,
vs.
CHARLES B. RICHARDS, REGISTER, and Charles Pomeroy, Receiver of the U. States Land Office at Fort Dodge, Iowa.

STATE OF IOWA, *Polk County, ss*:

Daniel O. Finch, of Des Moines, in said county being sworn deposes and says: That he has for the last ten or 12 years been the attorney for the corporation known as "the De Moine Navigation and Railroad Company," in cases involving and affecting their title to the lands known as the Des Moines river lands, lying above the Raccoon Forks, and in the counties of Polk, Boone, Webster and Hamilton. That his relation to the said company, as their attorney, has enabled him to become acquainted with the lands owned by the said company, and its grants in the counties of Webster and Hamilton, and to learn the value thereof. That he is familiar with the allegations of the bill in action, and with the matters in controversey herein, and that the matter in dispute in this action exceeds the sum or value of two thousand dollars, exclusive of costs.

And deponent further says, that he has a general acquaintance with the location and value of the lands in the bill of complaint herein claimed and alleged to belong to the complainant, Edwin C. Litchfield, alone and individually, and that they are reasonably worth more than one hundred thousand dollars.

And deponent further says, that his knowledge of the said lands, and the value thereof is based upon his general acquaintance with lands and their value in the said counties of Webster and Hamilton, and the facts of his having been the attorney, to protect the title to the said lands, and trespasses thereon.

DANIEL O. FINCH.

Subscribed and sworn to by Daniel O. Finch before me John D. Rivers, a notary public of Polk county, and State of Iowa, this 26th day of December, A. D. 1868, as witness my hand and notarial seal, at Des Moines, in said county, this 26th day of Dec., 1868.

[SEAL.]

JOHN D. RIVERS,
Notary Public, Polk County, Iowa.

SUPREME COURT OF THE UNITED STATES.

No. 392.

EDWIN C. LITCHFIELD, APPELLANT,

vs.

CHARLES B. RICHARDS, REGISTER, AND CHARLES POMEROY, RECEIVER OF THE UNITED STATES LAND OFFICE AT FORT DODGE, IOWA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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Pleas and proceedings had in the Circuit Court of the United States for the district of Iowa, at the regular term thereof, begun and held at the city of Des Moines, Iowa, on the third Tuesday of October, A. D. 1868.

Present: the Hon. S. F. Miller, circuit judge, presiding; Hon. J. M. Love, district judge.

1 Be it remembered that heretofore, to wit, on the 8th day of June, A. D. 1868, there was filed in the office of the clerk of the Circuit Court of the United States for the district of Iowa a bill in chancery, in words and figures following:

EDWIN C. LITCHFIELD, compl't,
v.
CHARLES B. RICHARDS, REGISTER, AND Charles Pomroy, receiver of the United States land office at Fort Dodge, Iowa, defendants. } In ch'y.

To the hon. judge of the Circuit Court of the United States for the district of Iowa:

Humbly complaining, your orator, Edwin C. Litchfield, respectfully shows unto your honor and the said Circuit Court:

That your orator is a citizen of the State of New York; that defendants, Charles B. Richards and Charles Pomroy, and both and each of them, are citizens of the State of Iowa.

2 And your orator shows that the said defendant, Charles B. Richards, was duly appointed register of the United States land office at Fort Dodge, Iowa; that he has duly qualified and is now acting as such register, and discharging the duties thereof; and that the said defendant, Charles Pomeroy, was duly appointed receiver of the United States land office at Fort Dodge, Iowa; that he has duly qualified and is now acting as such receiver, and discharging the duties thereof.

And your orator further shows, that on or about the 8th day of August, 1846, the Congress of the United States passed and enacted the act entitled "An act granting certain lands to the State of Iowa to aid in the improvement of the navigation of the Des Moines river, in said Territory," and to which, for greater certainty, your orator prays leave to refer; that the grant in said act contained and contemplated was duly accepted by the State of Iowa, by a joint resolution of the general assembly of the said State, approved Jan'y 9, 1847; that shortly and directly after the acceptance of said grant by the State of Iowa, agents appointed by the said State selected, designated, and claimed and set apart as passing to the State all the lands lying and being in the alternate (odd-numbered) sections (and then being and remaining undisposed of) within five miles of the Des Moines river, from the mouth to the source of said river.

3 And your orator further shows, that after such acceptance

of the said grant by the State of Iowa as aforesaid, and after the selection of the said lands by the agents of the said State as aforesaid, and on or about the 23d day of February, 1848, the Hon. R. M. Young, then Commissioner of the General Land Office, and having full power and authority in the premises, held and decided and declared, that the said grant to the State of Iowa, under the said act of August, 8th day of August, 1846, extended to the northern boundary of the State, and that "the State, under and by virtue of the said grant, was entitled to the alternate (odd numbers) sections within five miles of the Des Moines river, throughout the whole extent of that river, within the limits of Iowa;" and to which said decision of the said Commissioner, for greater certainty, your orator prays leave to refer.

And your orator further shows, that on or about the 2d day of March, A. D. 1849, the Hon. Robert J. Walker, then Secretary of the Treasury of the United States, and in the discharge of his duties as such Secretary, and having full power and authority in the premises, held, and decided and declared that the grant contained in and contemplated by the said act of August 8th, 1846, extended from the mouth to the source of the Des Moines river, and, in an official communication to the Commissioner of the General Land Office,
4 directed and instructed the said Commissioner to recognize and treat the said grant as so extending; and to which decision and instruction of the said Secretary, for greater certainty, your orator prays leave to refer.

And your orator further shows, that the said decisions of the said Commissioner of the General Land Office, and of the said Secretary of the Treasury, so far as they held and declared the said grant to extend to the northern limit and boundary of the State, were adopted and sanctioned, and ratified and approved, and acquiesced in and acted upon by the President of the United States, and the heads of the several departments, and all the executive officers of the federal government; and that, in recognition, adoption and approval of said decision, as aforesaid, and in furtherance thereof, and in conformity therewith, the duly constituted agents and officials of the United States, having charge of the public lands and invested with full power and authority in the premises, duly certified and approved to the State of Iowa, as passing to said State under the grant contained in and contemplated by the said act of August 8th, 1846, all the lands and tracts, pieces and parcels thereof, mentioned and described in the certified lists or schedules executed by said officers, copies whereof are hereto annexed, marked schedule A No. 1, and
5 schedule A No. 2, and schedule A No. 3, and schedule A No. 4; and to which original lists or schedules, with the certificates thereto annexed and appended, your orator, for greater certainty, prays leave to refer.

And your orator further shows, that all of the lands in said certified lists or schedules, described and designated and distinguished as lying and being in townships 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91 and 92, lie north of and above the Racoon Fork, or

junction of the Racoon with the Des Moines river; that before the date and delivery to the said State of the said certified lists, as aforesaid, and or about the 19th day of June, A. D. 1848, all of the said lands, tracts and parcels in said certified lists described, lying above the said Racoon Fork, which had then been surveyed, had been placed and ranked and classed among the public lands, and had been by the President of the United States ordered into market, and directed to be offered and exposed for sale as public lands, but that after the said decisions and action of the Commissioner of the General Land Office and Secretary of the Treasury, as aforesaid, and before the execution and delivery to the State of the said certified lists as aforesaid, all of such lands were withdrawn from market and entry, and sale and pre-emption, and by proper and competent authority "reserved," as passing to the State of Iowa, under the grant
6 in said act of Aug. 8, 1846, contained, and were wholly and duly withdrawn and withheld from market, and reserved from entry and sale and pre-emption; and that the lands and tracts in the said certified lists mentioned and described, which lie north of the Racoon Fork, but which had not then been surveyed, were shortly thereafter surveyed, and were, as soon as surveyed, withdrawn from the description or class of public lands subject to entry and sale, and by proper and competent authority withdrawn, withheld, and duly reserved from entry and sale and pre-emption, as passing to the State of Iowa, under the said act of August 8th, 1846, and were duly certified and approved to the State thereunder.

And your orator further shows, that on or the 9th day of June, A. D. 1854, the corporation known, designated and distinguished as "The Demoines Navigation and Railroad Company," was duly created, organized, constituted and established under and by virtue of the laws of the State of Iowa; that after the formation and organization of the said corporation, the said State of Iowa, by its duly authorized and constituted agents and officials, made and entered into a contract or agreement with the said "De Moine Navigation and Railroad Company" in writing, by the terms of which, in consideration that the said company should assume and pay the indebtedness and liability theretofore incurred by the State in the prosecution of the work for improving the navigation of the
7 said Des Moines river under the said act of August 8, 1846, and also the salaries due from the State to the officers of the said Des Moines river improvement, and also should furnish the requisite materials and workmen to carry on and complete the improvement of the navigation of the said river, as by said act of August 8, 1846, contemplated; the State agreed to sell and convey to the said company the said lands so certified to the said State under the said act as aforesaid at the sum and price stipulated of one dollar and twenty-five cents per acre, at the times and in the manner and upon the terms and conditions in said act of August 8, 1846 specified and provided, and to which said contract between the said State and the said company, for greater certainty, your orator prays leave to refer.

And your orator further shows, that under and by virtue of said contract with the State of Iowa, the said "De Moine Navigation and Railroad Company" did assume and pay the said indebtednes of the State incurred on said improvement and the salaries of the said officers of the Des Moines river improvements as aforesaid, and did enter upon the said work of improving the navigation of the said river and did pay, lay out and expend large sums of money in and about and upon said work, and prior to the 22d day of March, 1858, had received of and from the State, under the said contract or agreement, certificates for about one hundred and fifty thousand acres of the said lands, lying above the Raccoon Fork, and in said certified lists
8 mentioned, designated and described; that on the said 22d day of March, 1858, there was due from the State to the said company, under the said contract, for work, labor and service rendered and performed, moneys paid, laid out and expended by said company in and about and upon the prosecution of the said work a large sum of money, for which they were entitled to receive certificates of and for lands under the said contract, and on that day the said State, by the joint resolutions of the general assembly thereof, proposed and proffered a settlement with the said company upon the terms and conditions in said joint resolutions stated and recited and set forth, and to which said joint resolutions, for the greater certainty, your orator prays leave ro refer.

And your orator further shows, that the said proposition for settlement with the said "De Moine Navigation and Railroad Company" in said joint resolutions contained, was duly accepted by said company as in and by said resolutions contemplated and required, and the said company in all things duly performed and complied with all the terms and conditions of the said settlement by it to be done and performed thereunder, and having so accepted and performed the said terms and conditions of settlement, the State of Iowa, in performance of and in compliance with and in execution of the terms and conditions of such settlement on its part, on and about and during the month of May, 1858, executed and delivered to the said "De Moine Navigation and Railroad Company," the deeds of
9 the State, conveying in fee to the said company all the said lands in the said above-mentioned lists or schedules described which lie above the Raccoon Fork and which had not, prior to the 23d day of Dec'r, 1853, been sold or conveyed or agreed to be sold and conveyed by the State under the said grant of Aug. 8, 1846; all of which will more fully appear by reference to the said deed so executed by the State to the said "De Moine Navigation and Railroad Company," and to which, for greater certainty, your orator prays leave to refer.

And your orator further shows, that after the said decisions of the Commissioner of the General Land Office and Secretary of the Treasury above mentioned and referred to, down to and until the spring of 1860, the State of Iowa, its agents and officials, and all the departments of the general government and the executive officers thereof, held and regarded and treated the said lands lying in the

said alternate odd-numbered sections within five miles of the Des Moines river and above the Raccoon Fork, and by the said deeds of the State conveyed to the said "De Moine Navigation and Railroad Company" as aforesaid, as passing to the State of Iowa under and by virtue of the said grant of August 8, 1846; for the purposes in said act contemplated; that about the year 1860, the Supreme Court of the United States, in the case of Litchfield *vs.* The Dubuque and Pacific Railroad Company, intimated and indicated and declared that the said grant of Aug. 8, 1646, did not extend above the Raccoon Fork, and did not embrace and include the said lands lying in
10 the odd-numbered alternate sections between said Raccoon Fork and the northern limit of the State; that shortly after such decision and on about the 2nd day of March, 1861, for the purpose, as far as practicable or possible, of carrying out and giving effect to the construction which had been given to and placed upon the said grant of Aug. 8, 1846, by the State of Iowa and the government of the United States as aforesaid, and upon which both the State and federal governments acted, the Congress of the United States passed and adopted a joint resolution relinquishing to the State of Iowa all the interest which the United States then retained in the said lands, which had been previously certified to the State under the said grant of August 8, 1846, which said resolution is entitled "Joint resolution to quit titles in the State of Iowa," and to which, for greater certainty, your orator prays leave to refer.

And your orator further shows, that for the purpose and with the view and intent and design to extend the said grant of Aug. 8, 1846, to the northern boundary of the State, and to further give to said grant the construction and interpretation which had previously to the said decision of the Supreme Court as aforesaid been given and attached thereto and placed therein by the State of Iowa and its agents and the government of the Umited States and its agents and executive officers as aforesaid, and for the purpose of protecting the purchasers of the said lands from the State of Iowa under the
11 said grant, the Congress of the United States, on or about the 12th day of July, 1862, passed and enacted the act entitled "An act confirming a land claim in the State of Iowa and for other purposes," and to which, for greater certainty, your orator prays leave to refer.

And your orator further shows, that all of the said lands and tracts in the alternate odd-numbered sections, on both sides of the Des Moines river, within five miles thereof, above the Raccoon Fork, and which are in said certified lists described, were as early as the year 1851 or 1852, by the government of the United States and its duly appointed and constituted agents and officers having the charge and control of the public lands, duly withdrawn from market and set apart and appropriated and devoted to the said supposed grant of Aug. 8, 1846, and were duly withdrawn and withheld and reserved from entry and sale and pre-emption, and that such reservation so made and declared and established by the proper and competent authority has never been revoked or withdrawn or countermanded or in any way

removed, but that the same still exists and remains unrevoked and operative and in force, as will more fully appear by reference to the decision of the Supreme Court of the United States in the case of Samuel G. Wolcott *v.* The De Moine Navigation and Railroad Company, decided at the Dec'r term of the said court, in the year 1866, and to which, for greater certainty, your orator prays leave to refer.

12 And your orator further shows that by reason and on account of such reservation as aforesaid, the said lands in said alternate odd-numbered sections lying above the Raccoon Fork and within five miles of the Des Moines river, have not since such reservation was made been subject to entry and sale, to pre-emption claims under the pre-emption laws of the United States, and have been wholly withdrawn and withheld, and reserved from entry and sale and pre-emption, and that to the said lands and tracts no pre-emption rights have attached or could attach by settlement or otherwise.

And your orator further shows that the said corporation, "The De Moine Navigation and Railroad Company," heretofore before the filing of this bill, and since the month of May, 1858, by deeds of conveyance duly executed and acknowledged, conveyed to your orator in fee the several tracts, pieces, lots and parcels of land in the schedule hereto annexed marked "B" described, being part and parcel of the said lands conveyed to the said De Moine Navigation and Railroad Company by the said State of Iowa as aforesaid; and to which said deeds of conveyance for greater certainty your orator prays leave to refer.

13 And your orator further shows that all the said lands in the said schedule "B" described lie and are situate in the counties of Webster and Hamilton and Humboldt, in the State of Iowa, above the Raccoon Fork and within five miles of the Des Moines river; that the whole thereof (with the exception of forty acres thereof, situate in the county of Webster, which your orator has conveyed to one Benjamin Grayson) are still owned and the title thereto held by your orator; that all of the said lands so conveyed to your orator by said De Moine Navigation and Railroad Company, and held by him, are embraced and included and specified in the said lists of lands so certified and approved to the State of Iowa under the said grant of Aug. 8, 1846, and fall within and are covered by and embraced and included in the said reservation aforesaid, and are not and have not heretofore been subject to entry or sale or settlement or pre-emption.

And your orator further shows that in addition to the conveyance of the said lands in schedule "B" described by the said De Moine Navigation and Railroad Company to your orator as aforesaid, the said company has also since the month of May, 1858, by distinct and separate conveyances duly executed and acknowledged, conveyed to

14 different grantees all the lands included and embraced and described in the said certified lists aforesaid which lie in the counties of Webster and Hamilton and Humboldt, and above the Raccoon Fork, (with the exception of about twenty-seven thou-

sand acres thereof still owned by the said company,) and the same are now held and owned by the said several grantees of the said company, or persons to whom such grantees have conveyed the same.

And your orator further shows that the territorial jurisdiction of the said register and receiver of the United States land office located at Fort Dodge, in the said State, extends over and embraces and includes all public lands lying in the said counties of Webster and Hamilton and Humboldt, and each and every [and every] of said counties; and that all sales and entries and pre-emptions of lands lying in the said counties are primarily made and authorized and granted and allowed by the said register and receiver.

And your orator further shows that after the withdrawal of the said lands aforesaid from the market, and the reservation thereof from sale and entry and pre-emption as aforesaid, and while such reservation was operative and in force, and withheld such lands from settlement and pre-emption, certain persons wrongfully and without the authority of law, and in utter disregard and defiance of
15 the said reservation entered and made or assumed to make settlements upon certain of the tracts, pieces, parcels and portions of the said lands in the said lists included, and which lie within the limits of the said counties of Webster and Hamilton and Humboldt; and notwithstanding such lands were and have been so reserved, and not open or subject to settlement for pre-emption purposes, yet such persons so making such unlawful and wrongful entries and settlements upon the said lands, now by reason thereof claim and insist that such unlawful an unauthorized settlements upon the said lands entitle them to pre-empt the respective tracts so entered upon and settled by them respectively as aforesaid, under the pre-emption laws of the United States; and many of such persons so claiming have already made application, and others are about to make application to the said register and receiver of the United States land office at Fort Dodge aforesaid, (the defendants in this action,) to respectively pre-empt their respective tracts, and for certificates of pre-emption, or homestead entry and settlement of and for the said tracts or parcels so claimed to have been settled upon by them respectively, to the end that they may receive patents therefor, and thereby acquire a title or color of title thereto; that the said register and receiver have heretofore already allowed homestead en-
16 tries to be made upon some of the said tracts and granted and allowed and issued certificates of pre-emption of and to and upon other tracts thereof to the said persons making application therefor, and claiming to have settled on the said lands or parts and portions thereof; and that the said register and receiver are about to grant and allow homestead entries, and pre-emptions, and to issue certificates thereof to other persons applying therefor of to and upon the respective tracts claimed to have been on by such applicants respectively, for the purpose of aiding them in obtaining patents therefor from the United States.

And your orator further shews and alleges that none of the said

lands so settled upon in the said counties of Webster and Hamilton and Humbolt, and upon and to which homestead entries and pre-emption entries have been allowed by the said defendants, as aforesaid, or upon which such entries are now claimed as aforesaid, are subject to pre-emption or homestead entry, by the said persons claiming to pre-empt and enter the same under the laws of the United States, or by those who have been permitted and allowed to make such entries, as aforesaid; that neither the said defendants as such register and receiver, nor the Commissioner of the General Land Office, nor any other officer of the United States, un-
17 der the laws thereof, had or have any right or authority to allow the homestead entries or the pre-emption entries of or upon the said tracts and portions of the said lands so claimed by the said persons claiming and alleging settlements thereon as aforesaid; that all such entries and pre-emptions allowed and about to be allowed upon the said lands and tracts by the said register and receiver, or by any officer whomsoever, are not only without authority of, but in direct conflict with and in violation of the pre-emption laws of the United States; that notwithstanding the absence of all lawful right and authority on the part of the defendants as such register and receiver, to grant and allow such homestead entries and pre-emptions, yet the said register and receiver as aforesaid have allowed homestead entries, and allowed pre-emptions and issued certificates thereof to a large number of the said persons so claiming to have made settlements upon the said lands as above stated and set forth, and persist in allowing such entries against the remonstrance of your orator, and further avow and declare their purpose and intention to allow and permit still further homestead entries and pre-emptions, to the pretended settlers, on distinct tracts and parcels of the said lands respectively; that all such homestead entries and pre-emp-
18 tions upon any of the said lands, and the allowance thereof by the said register and receiver, are unauthorized by, and contrary to and in violation of law, and tend directly to embarrass and cloud the title of your petitioner, and that of the said several owners to the said tracts and parcels of said lands owned by them respectively.

And your orator further shows that many of the said tracts upon which the said register and receiver have allowed, and upon which they were about to grant and allow, further homestead entries and pre-emptions as aforesaid, are valuable timber lands; and that the persons so receiving pre-emption and homestead certificates of entry, under the color of title created thereby, are cutting down, destroying and carrying away from said lands, and converting and disposing of large quantities of valuable timber standing and growing thereon, to the great injury to the said lands and the depreciation of the value thereof, and to the great damage and injury of the respective owners thereof.

And your orator further shows that the said register and receiver, although they well know that the said lands and the whole thereof are not subject to homestead entries and pre-emption rights, but be-

long to your orator and the other persons now holding con-
19 veyances thereof, under and through the said State of Iowa and the said De Moine Navigation and Railroad Co., as aforesaid, are almost daily permitting and allowing persons applying so to do to file declaratory statements alleging settlements and intention to pre-empt particular tracts and portions thereof, all of which tends to cast a cloud upon the title of the respective owners of the said lands, and creates a color of title adverse to the real owners thereof.

And your orator further shows and alleges that by reason of the said several matters hereinabove stated and set forth, your orator and the other persons holding such conveyances under and throuhg the State and from the said De Moine Navigation and Railroad Co., are respectively the owners of and have and hold the title in fee ot the said several tracts, pieces and parcels of the said lands so conveyed to them, respectively, by the said De Moine Navigation and Railroad Company, as aforesaid; that in the premises none of the said lands lying in the said alternate odd-numbered sections in the said counties of Webster and Hamilton and Humboldt, are subject or liable to homestead or pre-emption entries or settlements; that the said several persons holding and owning title to the said tracts or parcels, respectively, upon which such homestead entries and pre-
emptions have been granted and allowed by the said register
20 and receiver, as aforesaid, and upon which pre-emption and homestead entries are claimed, as aforesaid, upon the said several tracts, pieces and parcels of the said lands situate in the said counties of Webster and Hamilton, have commenced actions in the proper district courts of the said several counties in which such lands and tracts respectively lie, for the purpose of settling and quieting the title thereto as against the said persons so claiming the right of homestead entry or pre-emption to the respective tracts claimed by them, and for the purpose of setting aside and cancelling all pre-emption and other entries allowed thereon, and confirming their respective titles thereto, which said actions are still pending and undetermined in the said several district courts of the proper and respective counties aforesaid.

And your orator further shows that he is not advised or informed as to the names of all the several persons now holding their titles to the said lands, or tracts and pieces thereof, in the said counties of Webster and Hamilton and Humboldt, under conveyances from the said De Moine Navigation and Railroad Company, or its grantees, nor
the extent of their respective titles and interest in and to
21 the said lands, or parts and portions thereof, but that there is a large number of persons who are the owners and have title to separate and distinct tracts, pieces and parcels thereof, who are non-residents of the State of Iowa, and are citizens, some them of the State of New York, some of the State of Ohio.

That all of such persons hold their respective titles, as does your orator, through and under conveyances from the State of Iowa, and the said De Moine Navigation and Railroad Company. That the question arising in this action is one of common and general interest

to all of the said purchasers and persons holding titles to parts, pieces and parcels of the said lands in the said counties of Webster and Hamilton and Humboldt. That the said parties so owning and holding title to respective tracts thereof, and who have so commenced actions to settle their respective titles as aforesaid, are numerous, and it is inconvenient and impracticable to bring them all before this court, and your orator therefore brings this action. and prays and claims the relief herein and hereby sought for himself and for the other persons so interested in the said lands as the owners of respective tracts thereof as aforesaid.

22 And your orator shows that he has reason to fear and believe, and does fear and believe, that the said Charles B. Richards, as such register, and the said Charles Pomeroy, as such receiver as aforesaid will, unless prevented and restrained by injunction, proceed and continue to allow and grant homestead entries to and upon the said lands of your orator and the other owners thereof as aforesaid, and also grant and allow pre-emptions thereof and thereon to applicants for such entries and pre-emptions, to the great detriment and injury of your orator and the other owners of said lands in the said counties of Webster and Hamilton and Humboldt, lying above the Raccoon Fork as aforesaid.

And your orator further shows that the said acts of the said defendants, above complained of, are contrary to equity, and injure your orator and the other persons for whom he prosecutes this action, and that neither he nor they have any relief save in a court of equity.

In tender consideration whereof, and for that your orator and those whom he represents are remediless by the strict rules of the common law, and relievable only in a Court of Equity, where matters of this nature are properly cognizable, your orator prays that the said Charles B. Richards, as register, and Charles Pomeroy, as receiver of the said United States land office at Fort Dodge, Iowa, their counselors, attorneys, solicitors and agents, may, by an injunction is-

23 suing out of this court, be restrained and enjoined and prohibited from granting and allowing homestead and pre-emption entries, or either of such entries, of, to and upon any of the said lands conveyed by the State of Iowa to the said De Moine Navigation and Railroad Company as aforesaid, and which lie in the alternate odd-numbered sections, within five miles of the Des Moines river and above the Raccoon Fork, and in either or any of the said counties of Webster and Hamilton and Humboldt, and that they he restrained and enjoined from hearing and investigating and determining and deciding applications for homestead entries and pre-emption entries, and granting certificates thereof to and upon any such lands in the said counties of Webster and Hamilton and Humboldt to applicants therefor, and also from filing or allowing to be filed in their respective offices declaratory statements preliminary to pre-emptions thereof and thereon, by and in behalf of any person or persons, until the final hearing, decision, trial and determination of the said several actions so commenced by your orator and the other owners of respective tracts and parcels of the said lands in the said District Courts of

Webster and Hamilton counties, for the purpose of settling and quieting the titles thereto, and determ'ing whether or not such lands are subject and liable to pre-emption and homestead entry as
24 aforesaid. That on the final hearing and trial of this action such injunction be made perpetual, and that your orator and the other persons and owners for whom he prosecutes this action as aforesaid, may have such other and further relief in the premises as shall be agreeable to equity and good conscience.

And that it may please your honor and this court to grant unto your orator, issuing out of and under the seal of this court, the writ of injunction, directed to the said Charles B. Richards and Charles Pomeroy, as such register and receiver, their counselors, attorneys, solicitors and agents, commanding them and each of them absolutely, to desist and refrain from granting and allowing homestead or pre-emption entries upon any of the said lands in the alternate odd-numbered sections in the said counties of Webster, Hamilton and Humboldt, within five miles of the Des Moines river above described and mentioned, and from hearing and deciding and determining applications for homestead and pre-emption entries thereof, or of any thereof, and from granting certificates of homestead or pre-emption entries thereof, or upon any parts or portions thereof, and from allowing declaratory statements of settlement thereon to be filed.

And that it may please your honor and this honorable court
25 to grant unto your orator the writ of subpœna, issuing out of this court, and under the seal thereof, directed to the said Charles B. Richards and Charles Pomeroy, as such register and receiver, thereby commanding them and each of them, by a certain day and under a certain penalty therein to be specified and inserted, to be and appear before this honorable court, and then and there to answer all the premises aforesaid, and to stand to and abide by and perform such order and decree therein as shall be agreeable to equity and good conscience, and as to this court shall seem meet.

And your orator shall ever pray, &c.

J. M. ELLWOOD,
Sol'r for Complainant.
J. W. RANKIN,
Of Counsel.

STATE OF IOWA, *Polk County, ss*:

I, John Browne, of said county, being first duly sworn, do depose and say, that I am the agent for said Edwin C. Litchfield, the complainant in the foregoing bill named; that I have charge of all the lands of said Litchfield in the State of Iowa; that the said Litchfield is a non-resident of the State of Iowa, and a citizen of the State of New York, and is now and for several months past has been
26 absent from the United States; that said Litchfield, by reason of such absence from the United States, has not personal acquaintance with all the facts stated in said bill, but that I have knowledge thereof and acquaintance therewith. And I do further depose and say, that I have read the foregoing bill, and know the con-

tents thereof, and that the is true of my own knowledge, except as to the matters therein stated on information and belief, and that as to those matters I believe it to be true.

J. BROWNE.

Subscribed and sworn to before me, W. W. Phillips, notary public, by John Browne, this 4th day of June, A. D. 1868.

W. W. PHILLIPS,
Notary Public, Polk County, Iowa.

(1.)

27 *Schedule A, No.* 1.

GENERAL LAND OFFICE, *October* 31*st*, 1851.

I, Justin Butterfield, Commissioner of the General Land Office, do hereby certify that the annexed copies of lists marked 1, 2, and 3, and the approval of the Secretary of the Interior, are true and literal exemplifications from the records of this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] J. BUTTERFIELD,
Commissioner General Land Office.

Explanations.

List No. 1. Shows the odd-numbered sections and parts of sections within the limits of the Des Moines river grant above the Raccoon forks, in the townships embraced in said list.

List No. 2. Shows the tracts sold within the above-mentioned sections and parts of sections, between the 24th August, 1848, and the 16th June, 1849, the period during which the grant was supposed to be limited on the north by the Raccoon fork.

List No. 3. Shows the residuary or vacant tracts after deducting from list No. 1 the sales contained in list No. 2, and is an exhibit, therefore, of the lands accruing to the State in virtue of the grant, not interfered with by previous sales.

28 *List No. 1.*

Showing the tracts falling within the limits of the Des Moines grant above the Raccoon forks of the Des Moines river, so far as the surveys have extended, under the decision of the Secretary of the Treasury of 2d March, 1849, that said grant extended to the north boundary of the State.

Part of section.	S.	T.	R.	Quantity.
Sw of sw	5	79	23 w	40.
All of	7	"	"	669. 44
N hf n hf se and n hf of sw	17	"	"	480.
Nw of ne and n hf of nw	21	"	"	120.
W hf of nw, w hf sw qr and se of sw	31	80	"	232.
Ne nw, nw sw and lots 1, 2, 3 and 4	3	78	24 w	223. 38
All of	5	"	"	700. 74
All of	7	"	"	652. 18
Lots No. 1, 2, 3, 4, 5, 6, 7, nw ne and nw	9	"	"	494. 83
All of	17	"	"	636. 47
All of	19	"	"	653. 12
Nw of nw	21	"	"	40.
Nw of ne, nw qr, ne sw, and w hf sw	29	"	"	320.
Ne qr, e hf nw, nw qr nw, and n hf se qr	31	"	"	363. 08
All of	1	79	24 w	668. 62
All of	3	"	"	673. 52
All of	5	"	"	620. 79
All of	7	"	"	643. 42
All of	9	"	"	640.
All of	11	"	"	640.
All of	13	"	"	640.
All of	15	"	"	640.
All of	17	"	"	594. 20
All of	19	"	"	646. 74
29 All of	21	"	"	567. 35
All of	23	"	"	640.
Nw qr, w hf sw	25	"	"	240.
All of	27	"	"	606. 10
Forward	--	--	--	14, 085 98

Part of section.	S.	T.	R.	Quantity.
Amount brot. up	--	--	--	14. 085. 98
All of	29	79	24 w	640.
All of	31	"	"	661. 28
All of	33	"	"	640.
E hf ne, nw qr ne, and lots 1, 2, 3, 4, 5, 6, 7 and 8	35	"	"	512. 05
All of	3	80	"	708. 23
All of	5	"	"	709. 84
All of	7	"	"	665. 18
All of	9	"	"	640.
All of	11	"	"	640.
Sw ne, nw, sw, and w hf se	13	"	"	440.
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	628. 61
All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of	29	"	"	615. 55
All of	31	"	"	604. 26

List No. 1—Continued.

Part of section.	S.	T.	R.	Quantity.
All of	33	30	24w	640.
All of	35	"	"	640.
W hf sw qr and se of sw	7	81	"	127.32
30 All of	19	"	"	642.08
Sw sw	21	"	"	40.
W hf sw	27	"	"	80.
All of	29	"	"	640.
All of	31	"	"	635.88
All of	33	"	"	640.
All of	1	78	25 w	698.16
E hf nw qr and e hf of sw	3	"	"	617.12
All of	11	"	"	640.
All of	13	"	"	598.70
Ne and e hf of se	23	"	"	240.
Amount forward	--	--	--	32,910 58

Part of section.	S.	T.	R.	Quantity.
Amount brought forward	--	-	--	32,910 58
Ne qr e hf nw, nw nw, e hf se, nw se and ne of sw	25	88	25 w	440.
All of	1	79	25	684.80
All of	3	"	"	681.70
N hf of ne	5	"	"	99.91
E hf, e hf nw, nw nw, and e hf of sw	9	"	"	520.
All of	11	"	"	640.
All of	13	"	"	640.
All of	15	"	"	640.
E hf of ne and e hf se	21	"	"	160.
All of	23	"	"	640.
All of	25	"	"	640.
E hf nw qr, e hf of sw and nw sw	27	"	"	600.
All of	35	"	"	640.
All of	1	80	"	707.56
31 All of	3	"	"	664.36
All of	5	"	"	689.74
All of	7	"	"	652.
All of	9	"	"	640.
All of	11	"	"	599.63
All of	13	"	"	596.83
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	653.04
All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of	29	"	"	640.
Ne, e hf, nw and ne of se	31	"	"	280.
All of	33	"	"	640.
All of	35	"	"	640.
All of	3	81	25 w	616.55
All of	5	"	"	617.84
All of	7	"	"	674.16
All of	9	"	"	640.
				53,728.36

List No. 1—Continued.

Part of section.	S.	T.	R.	Quantity.
Amount brought up	--	--	--	53,728.36
All of	11	81	25 w	640.
All of	13	"	"	640.
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	676.38
32 All of	21	"	"	640.
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of	29	"	"	600.76
All of	31	"	"	675.62
All of	33	"	"	561.25
All of	35	"	"	640.
All of	5	82	25 w	635.18
All of	7	"	"	658.86
N hf nw, w hf of sw and se of sw	9	"	"	200.
All of	17	"	"	640.
All of	19	"	"	663.92
W hf ne, se ne, and w hf and se qr	21	"	"	600.
W hf nw and w hf sw qr	27	"	"	160.
All of	29	"	"	640.
All of	31	"	"	663.10
All of	33	"	"	640.
W hf of ne, w hf of se	7	83	"	467.98
All of	19	"	"	653.08
W hf of nw qr and sw qr	29	"	"	240.
All of	31	"	"	665.52
All of	1	80	26 w	698.18
All of	3	"	"	701.92
E hf nw qr, and ne of sw	5	"	"	578.78
E hf nw qr, and e hf of sw	9	"	"	560.
All of	11	"	"	640.
All of	13	"	"	640.
N hf, and n hf of se	15	"	"	400.
Ne of ne	23	"	"	40.
Ne, ne of nw and e hf se qr	25	"	"	280.
				74,068.89

List No. 1—Continued.

33	Part of section.	S.	T.	R.	Quantity.
	Amount brought up	..	..	..	74,068.89
	All of	1	81	26 w	609.38
	All of	3	"	"	580.56
	All of	5	"	"	595.26
	All of	7	"	"	612.08
	All of	9	"	"	640.
	All of	11	"	"	598.73
	All of	13	"	"	631.42
	All of	15	"	"	640.
	All of	17	"	"	640.
	All of	19	"	"	612.
	All of	21	"	"	640.
	All of	23	"	"	640.
	All of	25	"	"	625.42
	All of	27	"	"	640.
	All of	29	"	"	640.
	Ne, ne nw, e hf se, nw se	31	"	"	320.
	All of	33	"	"	640.
	All of	35	"	"	640.
	All of	1	82	"	637.84
	All of	3	"	"	648.
	All of	5	"	"	589.23
	All of	7	"	"	608.
	All of	9	"	"	598.46
	All of	11	"	"	640.
	All of	13	"	"	640.
	All of	15	"	"	597.58
	All of	17	"	"	640.
	All of	19	"	"	613.24
	All of	21	"	"	640.
	All of	23	"	"	640.
	All of	25	"	"	640.
34	All of	27	"	"	590.91
	All of	29	"	"	640.
	All of	31	"	"	621.60
	All of	33	"	"	640.
	All of	35	"	"	640.
	All of	1	83	"	521.60
	All of	3	"	"	525.98
	All of	5	"	"	532.
					97,858.18

	Part of section.	S.	T.	R.	Quantity.
	Amount brought up	..	..	..	97,858.18
	All of	7	83	26 w	587.72
	All of	9	"	"	640.
	All of	11	"	"	640.
	All of	13	"	"	640.
	All of	15	"	"	640.
	All of	17	"	"	594.30
	All of	19	"	"	616.98
	All of	21	"	"	631.32
	All of	23	"	"	640.
	All of	25	"	"	640.
	All of	27	"	"	640.
	All of	29	"	"	592.36
	All of	31	"	"	620.
	All of	33	"	"	574.92
	All of	35	"	"	640.
	Total	..	..	..	107,195.78

General Land Office, December 26, 1849.

Commissioner.

35 *List No. 2.*

Showing the tracts which have been disposed of subsequently to the 24th of August, 1848, (being the date of the receipt, by the land officers, of the letter of 7th August, 1848, indicating that the grant extended only to the Raccoon forks of the Des Moines river,) and previous to the 16th June, 1849, the date of their reception of the letter from this office of 1st June, 1849, communicating the Secretary's decision that said grant extended beyond said point and to the north boundary of the State.

Part of section.	S.	T.	R.	Quantity.	No. of cert. or bounty land warrant.	Date of entry or location.
Ne of se, e hf of ne and nw of ne	17	79	23 w	160.	Wt. 7,776	Jan. 23, 1849
Ne of nw	3	78	24 w	58. 99	Cert. 1,667	Oct. 30, 1848
Nw of sw and lot No. 4	"	"	"	77. 65	" 1,667	" " "
Lots No. 1, 2 and 3	"	"	"	86. 74	" 1,604	" 16, "
E hf of ne frl. qr	5	"	"	95. 37	" 1,605	" " "
W hf of ne and e hf of nw frl. qr	"	"	"	190. 37	Wt. 9,352	" 30, "
W hf of nw frl	"	"	"	95.	Cert. 1,606	" 16, "
Sw qr	"	"	"	160.	Wt. 18,752	" 30, "
Se qr	"	"	"	160.	" 17,644	" " "
Ne qr	7	"	"	160.	" 3,182	" " "
E hf of nw qr	"	"	"	80.	Cert. 1,827	Dec. 16, "
W hf of nw frl. qr. nw of sw, and ne of sw	"	"	"	170. 89	Wt. 29,348	Feb. 1, 1849
Se of sw	"	"	"	40.	C. 1,668	Oct. 30, 1848
Se fr'll qr	"	"	"	158. 28	W. 6,064	" "
Sw fr'l qr of sw qr	"	"	"	43. 01	Decl. stm't fi'd Mh. 28, '49	
Lot No. 1 and nw of ne	9	"	"	75. 50	C. 1,192½	May 12, 1848
Lots No. 2 and 3	"	"	"	83. 68	" 1,608	Oct. 16, 1848
Lot No. 4	"	"	"	52. 85	" 1,830	Dec. 18. "
Nw qr	9	"	"	160.	Wt. 26,663	Oct. 30, "
Lot No. 5	"	"	"	40. 10	C. 2,027	May 3, 1849
Lot No. 7	"	"	"	38, 95	Wt. 1,327	Dec. 4, 1848
36 Ne qr	17	"	"	160.	" 22,655	" 6, "
Ne of nw, sw of nw and lot No. 2	"	"	"	116.	" 20,835	Nov. 18, "
Se of nw	"	"	"	40.	Decl. stm't filed May 3,'49	
S hf of nw and n hf of sw qr	1	79	"	160.	Wt. 13,050	June 12,1849
Ne fr'l qr	3	"	"	176. 73	" 20,352	Oct. 30, 1848
Nw of nw fr'l qr	"	"	"	48. 40	" 22,265	" "
N hf of sw and n hf of se	"	"	"	160.	" 18,984	" "
S hf of sw and s hf of se	"	"	"	160.	" 15,434	" "
E hf of nw qr	"	"	"	88. 39	" 47,879	May 18, 1849
Lot No. 3 and e hf of ne fr'l qr	5	"	"	143. 61	" 14,735	Oct. 30, 1848
Nw of ne fr'l qr and ne of nw	"	"	"	95. 05	" 13,224	" "
Lot No. 4	"	"	"	35. 88	" 57,240	June 11,1849
Forward	--	--	--	3,571. 44		

List No. 2—Continued.

Part of section.	Sec.	T.	R.	Quantity.	No. of certif. & B. L. Warrant.	Date of entry or location.
Amount br't over	--	--	--	3,571.44		
Lots No. 1, 2 and e hf of se	5	79	24 w	157.80	Wt. 57,241	June 11,1849
Se of ne	"	"	"	40.	" 32,818	Mar. 12, "
N hf of se	"	"	"	80.	" 33,462	June 4, "
Ne qr	9	"	"	160.	" 30,128	Oct. 30, 1848
Nw qr	"	"	"	160.	" 21,816	" "
W hf of sw qr	"	"	"	80.	" 3,884	" "
E hf of sw and w hf of se	"	"	"	160.	" 31,113	Feb'y12,1849
E hf of se	"	"	"	80.	" 20,597	" "
E hf of ne	11	"	"	80.	" 20,390	Oct. 30, 1848
E hf of nw	"	"	"	80.	" 46,651	April 16,1849
W hf of nw	"	"	"	80.	" 12,663	Oct. 30, 1848
Ne of sw	"	"	"	40.	" 46,651	April 16,1849
E hf of se	"	"	"	80.	" 43,986	May 30, "
W hf of nw	13	"	"	80.	" 44,121	" "
Lot No. 4	17	"	"	54.32	C. 1,610	Oct. 16, 1848
Lots 5 and 6 and w hf of nw	"	"	"	171.30	Wt 26,748	" 30, "
37 " 1, 2, 3 and se qr of ne	"	"	"	160.33	" 31,366	Feb'y12,1849
Lot No. 2	21	"	"	50.15	C. 1,611	Oct. 16, 1848
Lots 4 and 5 and e hf of sw qr	"	"	"	172.50	W. 3,577	" 30, "
Lots 6, 7 and 8	"	"	"	155.85	" 24,165	" " "
Lot No. 1	"	"	"	48.55	C. 1,611	" 16, "
N hf of ne and n hf of nw	27	"	"	160.	W. 24,141	" 30, "
Lots No. 2 and 3	"	"	"	110.70	" 28,332	" " "
" " 4 and 5	"	"	"	103.75	C. 1,612	" 16, "
N hf of se qr and s hf of ne	"	"	"	160.	W. 28,349	" 30, "
Lot No. 1 and se qr of se	"	"	"	71.65	" 26,659	" 30, "
S hf of ne and s hf of nw	29	"	"	160.	" 27,362	April 9, 1849
Sw qr	"	"	"	160.	" 23,720	Oct. 30, 1848
Se qr	"	"	"	160.	" 24,213	" "
E hf of ne qr and e hf of se qr	31	"	"	160.	" 19,002	May 18, 1849
W hf of ne and w hf of se	"	"	"	160.	" 32,931	June 4, "
Sw fr'l qr	"	"	"	171.32	" 1,114	April 30, "
N hf of ne	33	"	"	80.	" 26,669	Oct. 30, 1848
Nw qr	"	"	"	160.	" 30,371	Dec. 16, "
Sw qr	"	"	"	160.	C. 1,613	Oct. 16, "
S hf of ne and n hf of se	"	"	"	160.	W. 13,086	Nov. 4, "
Sw qr of se	"	"	"	40.	C. 1,958	Mar. 20,1849
Se qr of se	"	"	"	40.	W. 26,658	Oct. 30, 1848
Lots 3, 4, and n hf of ne	35	"	"	161.60	" 27,974	" " "
Lots No. 6, 7 and 8	"	"	"	185.10	C. 1,614	" 16, "
				8,306.36		

List No. 2—Continued.

Parts of section.	Sec.	T.	R.	Quantity.	No. of certif. & B. L. Warrant.	Date of entry or location.
Amount brought up	--	--	--	8,306.36		
Lot No. 5	35	79n	24w	26.35	Wt. 26,659	Oct. 30, 1848
Lot No. 1 and 2	"	"	"	99.	Cer. 1,762	Nov. 18, "
Se of ne	"	"	"	40.	Wt 26,660	Oct. 30, "
All of	5	80	"	709.84	Univ'y app'd	Feb. 26, 1849
38 Ne	7	"	"	160.	Decl.stm't fi'd	May 28, "
N qr of nw qr.	"	"	"	85.98	School land	Apr. 6, "*
S hf of nw qr and n hf of sw fr'l qr	"	"	"	172.59	W. 40,398	April16, "
Se qr	"	"	"	160.	" 20,899	Oct. 31, 1848
Sw qr	15	"	"	160.	" 35,806	Mar. 20. 1849
Nw qr	17	"	"	160.	" 50,206	May 20, "
Sw qr	"	"	"	160.	" 33,493	Jan. 23, "
Se qr	"	"	"	160.	" 20,009	Apr. 16, "
E hf of nw qr, nw of nw qr and lot 3	19	"	"	157.03	" 6.657	Nov. 18, 1848
Nw of ne	"	"	"	40.	" 8.052	" "
Sw of ne	"	"	"	40.	C. 1,789	" 27, "
Lots No. 1, 2, 4 and 5	"	"	"	154.49	Wt. 29,928	May 21, 1849
Lots No. 6 and 7 and n hf of se	"	"	"	157.09	" 47,877	" 18, "
Ne qr	21	"	"	160.	" 24,139	Oct. 30, 1848
Nw	"	"	"	160.	" 14,867	" "
Sw qr	"	"	"	160.	" 28,478	" "
N hf of se	"	"	"	80.	" 29,358	" "
S hf of se	"	"	"	80.	" 30,560	" "
S hf of ne and nw of ne	27	"	"	120.	" 38,169	May 30, 1849
N hf of sw and s hf of nw	"	"	"	160.	" 20,817	Oct. 30, 1848
E hf of ne	29	"	"	80.	" 11,407	Dec. 4. "
W hf of ne and e hf of nw	"	"	"	160.	" 20,538	Oct. 31, "
Lots 3, 4, 5, ne sw and nw of se	"	"	"	175.	" 29,085	Mch. 5, 1849
Lot No, 6	"	"	"	57.80	C. 1,616	Oct. 16, 1848
" 2	"	"	"	13.34	W. 19,037	Dec. 4, "
" 1	31	"	"	34.44	" 19,037	" "
" 7	"	"	"	42.39	" 57,240	June 11, 1849
Ne qr	33	"	"	160.	" 26,747	Oct. 30, 1848
Sw qr	33	"	"	160.	" 30,456	" "
E hf of se	"	"	"	80.	" 22,353	" "
W hf of ne	35	"	"	80.	" 38,167	May 30, 1849
Nw qr	"	"	"	160.	" 5,497	Mch.20, "
Sw qr	"	"	"	160.	" 37,809	" "
Se	"	"	"	160.	" 41,652	May 3, "
39 N hf	31	81	"	318.49	Univ'y app'd	Feb. 26, "*
Sw frl. qr	"	"	"	157.39	Wt. 21,157	Jan'y. 23, "
Forward	--	--	--	13.867.58		

*Act 29 J'ly, '40.
*Act 4 Sept, '41

List No. 2—Continued.

Part of section.	S.	T.	R.	Quantity.	No. of cert. or warrants.	Date of entry, &c.
Brought forward	--	--	--	13,867.58		
Ne of ne	1	78	25 w	54.51	Wt. 35,763	Jan'y 23, 1849
Ne, nw, nw of ne and sw of nw	11	"	"	120	Decl. stm't fil'd	Apr. 16, 1849
Sw	"	"	"	160	Wt. 26,183	Jan'y 23, "
Se	"	"	"	160	" 22,200	April 16, "
Lots Nos. 1 and 2	13	"	"	80	" 4,552	Oct. 30, 1848
Lots 3 and 4 and nw of nw	"	"	"	124.30	" 4,730	Nov. 23, "
Lot No. 5	"	"	"	42.05	" 30,488	Nov. 13, "
Sw of sw	"	"	"	40	" 33,045	" " "
Se of sw and sw of se	"	"	"	80	" 25,683	Dec. 4, "
Ne	23	"	"	160	" 46,006	April 16, 1849
E hf of ne, sw of ne and se of nw	25	"	"	160	" 26,469	May 16, "
Sw	1	79	25 w	160	" 38,059	April 30, "
Se	"	"	"	160	" 38,125	" " "
S hf of ne, nw of ne and ne of nw	13	"	"	160	" 38,165	May 30, "
S hf of nw and nw of nw	"	"	"	120	" 2,163	April 19, 1849
W hf of sw	"	"	"	80	" 30,186	Nov. 27, 1848
Se qr	"	"	"	160	" 25,713	Dec. 4, "
Ne of ne	23	"	"	40	" 30,186	Nov. 27, "
E hf of ne and e hf of se	25	"	"	160	" 3,621	Oct. 30, "
Ne fr qr of ne	1	80	"	56.78	" 10,268	Jan. 23, 1849
Nw of ne and e hf of nw	"	"	"	153.78	" 26,503	Mar. 20, "
W hf fr of nw and n hf of sw	"	"	"	177	" 30,192	Nov. 13, 1848
S hf of sw	"	"	"	80	" 24,836	Jan. 23, 1849
Se	"	"	"	160	" 27,415	" " "
N frl hf of ne and ne of nw	3	"	"	167.15	" 36,371	" " "
Ne of ne	11	"	"	40	C. 2,128	Jan. 12, "
W hf of ne, se of ne and ne of se	"	"	"	160	Wt. 28,871	Mar. 3, "
40 Nw qr	"	"	"	160	" 24,545	May. 21, "
E hf of ne	13	"	"	80	" 39,898	" 16, "
Lots 5 and 6 and sw of ne	"	"	"	110.80	" 19,728	Mar. 20, "
Lots 1 and 2	"	"	"	105.85	" 15,273	" " "
E hf of se and nw of se	"	"	"	120	" 45,827	April 16, "
E hf of se and nw of se	29	"	"	120	" 57,244	June 11, "
Sw of nw, and w hf of sw frl qr	19	81	"	147.21	" 21,408	May 21, "
Nw qr	21	"	"	160	Decl. stm't fl'd	Mar. 21, 1849
Sw qr	"	"	"	160	Wt. 24,292	Mar. 20, "
Forward	--	--	--	18,247.81		

List No. 2—Continued.

Part of section.	S.	T.	R.	Quantity.	No. of cert. or bounty land warrant.	Date.
Brought up	--	--	--	18,207.81		
W hf of ne and e hf of nw	27	81	25 w	160	Wt. 30,139	Oct. 30, 1848
Sw qr	"	"	"	160	" 23,433	May 21, 1849
Se	"	"	"	160	" 21,407	" " "
Lot No. 2, w hf of sw and se of sw	29	"	"	162.73	" 25,731	Dec. 4, 1848
Lot No. 1	"	"	"	39.34	C. 3,980	" 18, "
Lots 3 and 4 and se of se	"	"	"	130.32	W. 45,853	
Lots 1, 7, 8, 9 and 10	33	"	"	149.66	" 21,416	May 21, 1849
Lots 11, 12, 13 and ne of se	"	"	"	159.70	" 25,610	" " "
Nw qr	35	"	"	160	" 29,243	June13, "
Sw	"	"	"	160	" 19,025	Oct. 30, 1848
E hf of ne	"	"	"	80	" 38,162	May 30, 1849
W hf of ne and n hf of se	"	"	"	160	114	June13, "
E hf of se	"	"	"	80	" 30,125	Oct. 30, "
All of	19	82	"	663	University	Feb. 21, " [a]
Se of se	21	"	"	40	Wt. 9,999	Dec. 18, 1848
Nw of nw	27	"	"	40	" 9,999	" " "
Ne frl. qr	1	81	26 w	144.04	" 3,923	April16, 1849
Nw frl. qr	1	"	"	145.34	" 30,477	Dec. 18, 1848
Sw	"	"	"	160	" 54,399	June 4, 1849
41 S hf of sw	3	"	"	80	" 7,382	Nov. 13, 1848
Lots 1, 2, and 3, and se qr of nw	11	"	"	171.20	" 3,636	Mar. 28, 1849
Sw of nw: lot 4 and nw of sw	"	"	"	125.49	" 31,115	" " "
W hf of sw, and lot No. 2	13	"	"	62.07	" 24,427	Dec. 18, 1848
E hf of sw, and w hf of se	"	"	"	160	" 4,139	April30, 1849
SW	23	"	"	160	" 26,632	April16, "
W qr of nw	25	"	"	80	" 19,227	May 3, "
Nw frl. qr	1	82	"	159.88	" 26,661	Oct. 30, 1848
S hf of ne, ne of sw, and nw of se	"	"	"	160	" 30,481	Jan. 23, 1849
Lots 1, 2, 3, and ne of se	5	"	"	140.33	" 25,574	Feb. 26, "
Sw qr	11	"	"	160	" 36,711	Jan. 23, "
Sw qr	23	"	"	160	" 42,089	April16, " [a]
All of	25	"	"	640	University	Feb. 26, "
Lots 8 and 9, and sw of sw	27	"	"	110.55	Wt. 9,931	Nov. 18, 1848
Nw	35	"	"	160	" 32,344	May 8, 1849
Ne	"	"	"	160	" 35,869	Mar. 5, "
E hf of ne qr	3	83	"	51.12	" 304	Nov. 13, 1848
Forward				23,943.50		

Part of section.	Sec.	T.	R.	Quantity.	No. of cert. & B.L. warrant.	Date of entry or location.
Brought forward	--	--	--	23,943.50		
Se qr	3	83	26 w	160	Wt. 15,490	April16, 1849
Nw frl qr and w hf of ne frl qr	5	"	"	159	" 50,617	June11, "
Lots 3 and 4, and e hf of ne	7	"	"	167.17	" 13,117	May 16, "
Lots 5, 6, w frl hf of nw qr and nw qr of sw qr	"	"	"	163.23	" 18,645	Feb. 26, "
Lots 7 and 8, and sw of sw	"	"	"	93.13	" 50,697	June11, "
E hf of se and lot No. 1	"	"	"	121.04	" 26,300	" 4, "
N hf of sw and sw of nw	11	"	"	120	" 28,350	Oct. 30, 1848
Ne qr	15	"	"	160	" 34,172	June 4, 1849
E hf of se	"	"	"	80	" 29,982	Oct. 30, 1848
E hf of sw qr and w hf of se	"	"	"	160	" 29,467	" " "
Lot 5 and sw of sw	17	"	"	80.80	" 23,174	Feb. 1, 1849
S hf of se	35	"	"	80	" 32,898	" 26, "
Total	--	--	--	25,487.87		

[a] Act July 20, '40.

42 *List No. 3.*

Showing the vacant tracts, within the odd-numbered sections, within five miles, on either side of the Des Moines river.

Description.	S.	T.	R.	Acres.
Sw of sw	5	79	23 w	40
All of	7	"	"	669.44
Nw qr, sw of ne, nw of se and n hf of sw	17	"	"	320
Nw of ne and n hf of nw	21	"	"	120
W hf of nw, w hf of sw qr and se qr of sw	31	80	"	232
Lot No. 6	9	78	24	43.75
S hf and fr. on left bank	17	"	"	320.47
All of	19	"	"	653.12
Nw of nw	21	"	"	40
Nw of ne, nw ne of sw and w hf sw	29	"	"	320
Ne, e hf of nw, nw of sw, and n hf of se	31	"	"	363.08
N hf of sw, s hf of sw, and e hf	1	79	"	508.62
Sw of nw	3	"	"	40
Lots No. 5, 6, 7, and w hf of sw	5	"	"	188.45
N hf of ne and sw qr of ne and s hf of se and w hf	7	"	"	523.42
W hf of ne, w hf of se, w hf of sw and se of sw	11	"	"	280
E hf, sw, and e hf of nw qr	13	"	"	560
All of	15	"	"	640
Lots No. 7, 8 and 9, w hf of sw and se of sw	17	"	"	208.25
All of	19	"	"	646.74
Lot No. 3, w hf of sw and sw of nw	21	"	"	140.30
All of	23	"	"	640
Nw of w hf of sw	25	"	"	240
N hf of ne and n hf of nw	29	"	"	160
Total of 1st column	--	--	--	7,897.64
43 (2d column.) Nw frl qr	31	79	24 w	169.96
All of	3	80	"	708.23
S hf of sw qr	7	"	"	86.61
All of	9	"	"	640.
All of	11	"	"	640.
Sw qr of ne, nw qr and w hf of se	13	"	"	440.
N hf of se	15	"	"	480.
Ne	17	"	"	160.
E hf of ne	19	"	"	80.
All of	23	80	24 w	640.
All of	25	"	"	640.
Ne of ne, s hf of sw, n hf of nw and se qr	27	"	"	360.
E hf of se, sw of se and lot No. 1	29	"	"	129.41
Lots 2, 3, 4, 5, 6, w hf of nw frl qr				
Ne hf nw and sw frl qr	31	"	"	527.43
Nw and w hf of se	33	"	"	240.
E hf of ne	35	"	"	80.
W hf of sw and se of sw	7	81	"	127.32
All of	19	"	"	642.08
Sw of sw	21	"	"	40.
W hf of sw	27	"	"	80.
All of	29	"	"	640.
Se	31	"	"	160.
All of	33	"	"	640.
S hf of ne, nw of ne, w hf and se qr	1	78	25	643.65
E hf, nw qr and e hf of sw	3	"	"	617.12
Nw qr of nw qr, se qr of nw qr, e hf of ne and sw qr of ne	11	"	"	200.
Se of se and ne qr of se	13	"	"	80.
Total of 2d column	--	--	--	9,891.81

List No. 3—Continued.

	Description.	S.	T.	R.	Acres.
(3d column.)	Lots No. 6, 7 and 8	13	78	25 w	151. 55
	E hf of se	23	"	"	80.
	Nw of ne, ne of nw, nw of nw, e hf of se, nw of se	25	"	"	280.
44	N hf	1	79	"	364. 80
	All of	3	"	"	681. 70
	N hf of ne	5	"	"	79. 91
	E hf, e hf of nw, nw of nw and e hf of sw	9	"	"	520.
	All of	11	"	"	640.
	Ne of ne and e hf of sw	13	"	"	120.
	All of	15	"	"	640.
	E hf of ne, and e hf of se	21	"	"	160.
	W hf of ne, se of ne and w hf and se	23	79	25 w	600.
	All of	25	"	"	640.
	E hf, nw qr, e hf of sw qr and nw of sw	27	"	"	600.
	W hf of ne, w hf of se and w hf	35	"	"	480.
	S hf of ne	1	80	"	80.
	S hf of ne, e hf of se and Lots No. 1, 2, 3, 4, 5, 6 and 7	3	"	"	497. 21
	All of	5	"	"	689. 74
	All of	7	"	"	652.
	All of	9	"	"	640.
	Lots No. 1, 2, 3, 4, 5, 6 and 7	11	"	"	239. 63
	Lots 3, 4, 7 and 8	13	"	"	180. 18
	All of	15	"	"	640.
	All of	17	"	"	640.
	All of	19	"	"	753. 04
	All of	21	"	"	640.
	All of	23	"	"	640.
	All of	25	"	"	640.
	All of	27	"	"	640.
	Sw of se, ne qr and w hf	29	"	"	520.
	Ne qr, e hf nw qr and ne of se	31	"	"	280.
	All of	33	"	"	640.
	All of	35	"	"	640.
	All of	3	81	"	616. 55
	All of	5	"	"	617. 84
	Total of 3d column	--	--	--	16,844. 15
45	(4th column.) All of	7	81	25	674. 16
	All of	9	"	"	640.
	All of	11	"	"	640.
	All of	13	"	"	640.
	All of	15	"	"	640.
	All of	17	"	"	640.
	E hf e hf of nw, nw of nw and e hf of sw qr	19	"	"	529. 17
	E hf	21	"	"	320.
	All of	23	"	"	640. 00
	All of	25	"	"	640.
	E hf of ne and w hf of nw	27	81	25	160.
	Lots No 5, 6, 7, 8, and n hf of ne	29	"	"	268. 37
	All of	31	"	"	675. 62
	Lots 2, 3, 4, 5, 6, and sw qr of sw qr	33	"	"	251. 91
	All of	5	82	"	635. 18
	All of	7	"	"	658. 86
	W hf of nw, w hf of sw, and se of sw	9	"	"	200. 00
	All of	17	"	"	640.
	W hf of ne, se of ne, w hf, w hf of se and ne of se qr	21	"	"	560.
	Sw of nw and w hf of sw	27	"	"	120.
	All of	29	"	"	640.
	All of	31	"	"	663. 10
	All of	33	"	"	640.
	W hf of ne, w hf, and w hf of se	7	83	"	467. 98

List No. 3—Continued.

	Description.	S.	T.	R.	Acres.
	All of	19	83	25	653.08
	W hf of nw and sw	29	"	"	240.
	All of	31	"	"	665.52
	All of	1	80	26	698.18
	All of	3	"	"	701.92
	E hf, nw qr and ne of sw	5	"	"	578.78
	E hf, nw and e hf of sw	9	"	"	560.
	All of	11	"	"	640.
	All of	13	"	"	640.
46	N hf and n hf of se	15	"	"	400.
	Ne of ne	23	"	"	40.
	Ne qr, ne of nw and e hf of se	25	"	"	280.
	Total of 4th column	--	--	--	18,681.83
	(5th column.) Se qr	1	81	26	160.
	N hf of sw, s hf of nw fr. qr and lots 1, 2, 3, 4, 5, 6, and sw of se	3	"	"	500.56
	All of	5	"	"	595.26
	All of	7	"	"	612.08
	All of	9	"	"	640.
	Sw of sw and lots 5, 6, 7, 8 and 9	11	"	"	302.04
	Lot 1, e hf of se and n hf	13	"	"	409.35
	All of	15	"	"	640.
	All of	17	"	"	640.
	All of	19	81	26 w	612.
	All of	21	"	"	640.
	N hf and se qr	23	"	"	480.
	S hf, se qr of nw qr, and lots 1, 2, 3 and 4	25	"	"	545.42
	All of	27	"	"	640.
	All of	29	"	"	640.
	Ne qr, ne qr of nw qr, e hf of se qr and nw qr of se qr	31	"	"	320.
	All of	33	"	"	640.
	All of	35	"	"	640.
	N frl hf of ne frl qr, e hf of se qr, sw of se, w hf of sw and se of sw qr	1	82	"	317.96
	All of	3	"	"	648.
	Nw frl qr of ne qr, w frl hf of nw qr, ne frl qr of nw qr w hf of sw qr, se qr of sw qr and lots No. 4, 5, 6, 7 and 8	5	"	"	448.90
	All of	7	"	"	608.
	All of	9	"	"	598.46
	E hf of nw qr	11	"	"	480.
	All of	13	"	"	640.
	All of	15	"	"	597.58
	All of	17	"	"	640.
47	All of	19	"	"	613.24
	All of	21	"	"	640.
	E hf of nw qr	23	"	"	480.
	W hf of nw qr, ne qr of nw qr, nw of sw qr, e hf of se qr and lots No. 1, 2, 3, 4, 5, 6 and 7	27	"	"	480.36
	All of	29	"	"	640.
	Total of 5th column	--	--	--	17,489.21
	(6th column.) All of	31	81	26 w	621.60
	All of	33	"	"	640.
	S hf	35	"	"	640.
	All of	1	83	"	521.60
	W frl hf of ne qr and w frl hf of	3	"	"	314.86
	E frl hf of ne and s hf	5	"	"	373.
	Lot No. 2	7	"	"	43.15
	All of	9	"	"	640.

List No. 3—Continued.

Description.	S.	T.	R.	Acres.
E hf, e hf of nw qr, nw qr of nw qr and s hf of sw qr	11	83	26w	520.
All of	13	"	"	640.
W hf of sw qr and nw qr	15	"	"	240.
Ne qr, n hf of nw qr and lots No. 1, 2, 3, 4, 6, 7 and 8	17	83	26 w	513. 50
All of	19	"	"	616. 98
All of	21	"	"	631. 32
All of	23	"	"	640.
All of	25	"	"	640.
All of	27	"	"	640.
All of	29	"	"	592. 36
All of	31	"	"	620.
All of	33	"	"	574. 92
W hf, ne qr and n hf of se qr	35	"	"	560.
Total of sixth column				10,903. 29

48 RECAPITULATION.

List No. 3.	First column	7,897.64
" "	Second do	7,891.81
" "	Third do	16,844.15
" "	Fourth do	18,681.83
" "	Fifth do	17,489.21
" "	Sixth do	10,903.29
	Total acres	81,707.29

DEPARTMENT OF THE INTERIOR, *October 30th*, 1851.

The selections embraced in the within list No. 3, are hereby approved in accordance with the views expressed in my letter of the 29th inst. to the Commissioner of the General Land Office, subject to any rights which may have existed at the time the selections were made known to the land officers by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise disposed of, prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Fork.

(Signed) ALEX. H. H. STUART, *Secretary.*

49 *Schedule A. No.* 2.

GENERAL LAND OFFICE, *March* 16, 1852.

I, Justin Butterfield, Commissioner of the General Land Office, do hereby certify that the annexed list, showing the vacant lands in the odd numbered sections above the Raccoon Forks, within five miles of the Des Moines river, approved March 10, 1852, is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] J. BUTTERFIELD,
Commissioner of the General Land Office.

50 *A list*

Showing the vacant lands in the odd numbered sections above the Raccoon Forks, and within five miles of the Des Moines river, as far as the surveys have progressed, falling to the State of Iowa under the act of the 8th of August, 1846, as construed by the Secretary of the Treasury in his letter of 2d March, 1849, and of the Secretary of the Interior of the 29 October, 1851, not heretofore approved.

Tracts.	S.	T.	R.	Quantities.
Sw qr of sw qr	31	84	25	42.48
All of	3	84	26	713.70
All of	5	"	"	718.52
All of	7	"	"	603.01
All of	9	"	"	640.
All of	11	"	"	640.
All of	15	"	"	640.
All of	17	"	"	640.
All of	19	"	"	624.50
All of	21	"	"	640.
W hf of	23	"	"	320.
W hf and ne of ne qr	"	"	"	120.
W hf of se qr	"	"	"	80.
W hf of sw qr	25	"	"	80.
All of	27	"	"	640.
				7142.21

51 All of	29	84	26	640.
All of	31	"	"	599.76
All of	33	"	"	640.
All of	35	"	"	640.
Nw qr nw qr and s hf of nw qr and sw qr	3	85	26	277.28
All of	5	"	"	29.54
All of	7	"	"	611.98
All of	9	"	"	640.
W hf s, sw qr of ne hf w hf and se qr of se qr	15	"	"	480.
All of	17	"	"	640,
All of	19	"	"	616.30
All of	21	"	"	640.
W hf of nw qr and sw qr	23	"	"	240.
All of	27	"	"	640.
All of	29	"	"	640.
All of	31	"	"	618.16
All of	33	"	"	640.
W hf of sect., and w hf of ne qr and n hf of se qr	35	"	"	480.
All of	3	86	26	625.92
All of	5	"	"	625.86
All of	7	"	"	606.82
All of	9	"	"	640.
W hf, w hf and ne qr of ne qr and w hf of se qr	11	"	"	520.
All of	15	"	"	640.
All of	17	"	"	640.
				14,610.62

List—Continued.

	Tracts.	S.	T.	R.	Quantities.
52	All of	19	86	26	607.76
	All of	21	"	"	640.
	All of	29	"	"	640.
	All of	31	"	"	607.84
	All of	33	"	"	640.
	All of (except w hf of sw qr)	5	87	26	583.98
	S hf of	9	"	"	320.
	N hf of	15	"	"	320.
	All of	17	"	"	610.
	S hf of	21	"	"	320.
	W hf of se qr	23	"	"	80.
	E hf and sw qr	27	"	"	480.
	E hf of ne qr, e hf of se qr, w hf of nw and w hf sw qr.	29	"	"	320.
	All of	33	"	"	640.
	All of	35	"	"	640.
	Sw qr of sw qr	29	88	26	40.
	All of	31	"	"	580.68
	All of	1	81	27	593.64
	Ne qr and e hf of se qr	11	"	"	240.
	N hf, se qr and e hf sw qr	13	"	"	560.
	E hf of ne qr	25	"	"	80.
	All of	1	82	"	633.66
	All of	3	"	"	639.68
	Ne qr and e hf of se qr	9	"	"	240.
	All of	11	"	"	640.
					11,727.24

53	All of	13	82	27	640.
	All of	15	"	"	640.
	All of	23	"	"	640.
	All of	25	"	"	640.
	Ne ¼ of ne ¼	27	"	"	40.
	E half of sec and e half of nw qr and e half of sw qr	35	"	"	480.
	All of	1	83	27	481.07
	All of	3	"	"	528.04
	All of	5	"	"	525.24
	All of	7	"	"	646.08
	All of	9	"	"	640.
	All of	11	"	"	640.
	All of	13	"	"	640.
	All of	15	"	"	640.
	All of	17	"	"	640.
	All of	21	"	"	640.
	All of	23	"	"	640.
	All of	25	"	"	640.
	All of	27	"	"	640.
	E half of	33	"	"	320.
	All of	35	"	"	640.
	All of	1	84	27	657.85
	All of	3	"	"	710.78
	All of	5	"	"	706.24
	All of	7	"	"	643.84
					14,699.14

List—Continued.

	Tracts.	S.	T.	R.	Quantities.
54	All of	9	84	27	640.
	All of	11	"	"	640.
All of		13	"	"	585. 56
All of		15	"	"	640.
All of		17	"	"	640.
All of		19	"	"	643. 84
All of		21	"	"	640.
All of		23	"	"	579. 25
All of		25	"	"	629. 74
All of		27	"	"	635. 53
All of		29	"	"	640.
All of		31	"	"	645. 20
All of		33	"	"	640.
All of		35	"	"	599. 22
All of		1	85	27	627. 58
All of		3	"	"	582. 14
All of		5	"	"	643. 58
All of		7	"	"	638. 60
All of		9	"	"	640.
All of		11	"	"	590. 64
All of		13	"	"	640.
All of		15	"	"	605. 51
All of		17	"	"	640.
All of		19	"	"	644. 80
All of		21	"	"	640.
					15, 691. 19
55	All of	23	85	27	617. 57
	All of	25	"	"	640.
All of		27	"	"	597. 60
All of		29	"	"	640.
All of		31	"	"	645. 40
All of		33	"	"	640.
All of		35	"	"	621. 60
Ne qr of se qr and lots 5, 6, 7, 8 and s half of se qr		1	86	27	326. 39
All of		3	"	"	574. 46
All of		5	"	"	627. 58
All of		7	"	"	629. 69
All of		9	"	"	640.
N half of sec		11	"	"	320.
All of		13	"	"	640.
All of		15	"	"	630. 65
All of		17	"	"	640.
All of		19	"	"	632. 60
All of		21	"	"	596. 88
All of		23	"	"	640.
All of		25	"	"	640.
All of		27	"	"	591. 16
All of		29	"	"	640.
All of		31	"	"	634. 72
All of		33	"	"	640.
All of		35	"	"	640.
					15, 086. 21

List—Continued.

	Tracts.	S.	T.	R.	Quantities.
56	N half of sec and e half of se qr	1	87	27	426.44
	All of	3	"	"	673.90
	All of	5	"	"	681.60
	W half of s and se qr	7	"	"	480.
	S half of	9	"	"	320.
	W half of	11	"	"	320.
	Lots 1, 2, 5, 6, 7, 8, and e half of ne qr, sw qr of nw qr and w half of sw qr	15	"	"	472.80
	All of	17	"	"	611.25
	All of	21	"	"	587.82
	All of lots 1, 2, 3, and sw qr of sw qr	23	"	"	121.
	E half of sec	27	"	"	320.
	W half of sect	33	"	"	320.
	All of	35	"	"	640.
	Sw qr of nw qr and w half of sw qr	3	88	27	120.
	All of	5	"	"	701.30
	All of	7	"	"	598.86
	All of	9	"	"	640.
	W half of sect., and w half of ne qr and w half of se qr	15	"	"	480.
	All of	17	"	"	640.
	All of	19	"	"	599.10
	All of	21	"	"	640.
	S half of sect., and s half of ne qr and s half of nw qr	23	"	"	480.
	All of	25	"	"	640.
	All of	27	"	"	640.
					12,154.07

57	All of	29	88	27	640.
	E hf of ne qr, w hf of nw qr and sw qr	31	"	"	285.28
	All of	33	"	"	640.
	All of	35	"	"	640.
	W hf of sect w hf of ne qr and se qr	19	89	27	583.92
	S hf of sw qr	21	"	"	80.
	S hf of nw qr, sw qr and se qr of se qr	27	"	"	360.
	All of	29	"	"	640.
	All of	31	"	"	663.72
	All of	33	"	"	640.
	Nw qr of nw qr, s hf of nw qr, sw qr and w hf of se qr	35	"	"	360.
	E hf of sect, n frl qr nw qr, and ne hf of of sw qr	1	83	28	352.25
	All of	1	84	28	696.26
	E hf of ne qr	11	"	"	80.
	E hf of sect, and e hf nw qr and e hf of sw qr	13	"	"	480.
	All of	25	"	"	640.
	All of	1	85	"	645.60
	E hf of sect	11	"	"	320.
	All of	13	"	"	640.
	E hf of ne qr, e hf and sw qr of se qr	23	"	"	200.
	All of	25	"	"	640.
	E hf of sect	35	"	"	320.
	All of	1	86	28	627.88
					11,174.91

List—Continued.

	Tracts.	S.	T.	R.	Quatity.
58	N hf of sect, se qr and ne qr of sw qr	3	86	28	503. 02
	All of	11	"	"	640.
All of		13	"	"	640.
E hf of ne qr and e hf of se qr		15	"	"	160.
All of		23	"	"	640.
All of		25	"	"	640.
E hf of ne qr and e hf of se qr		27	"	"	160.
All of		35	"	"	640.
All of		1	87	28	622. 58
N hf and sw qr		3	"	"	518. 28
All of		5	"	"	673. 98
All of		7	"	"	621. 98
All of		9	"	"	640.
W hf and se qr		11	"	"	480.
All of		13	"	"	640,
All of		15	"	"	640.
All of		17	"	"	640.
All of		21	"	"	640.
All of		23	"	"	640.
All of		25	"	"	640.
All of		27	"	"	640.
N hf of ne qr, se qr of ne qr and ne qr se qr		29	"	"	160.
Ne qr, ne qr of nw qr, n hf and se qr of se qr		33	"	"	320.
All of		35	"	"	640.
All of		1	88	28	709. 10
All of		3	"	"	719. 64
					14. 608. 58
59	N hf of sec and lot 4	5	88	28	439. 87
	Se qr	7	"	"	160.
All of		9	"	"	640.
Sw qr and s hf of nw qr		11	"	"	240.
N hf and se qr		13	"	"	480.
All of		15	"	"	599. 68
N hf se qr and e hf of sw qr		17	"	"	510. 55
W hf, se qr, and w hf of ne qr		19	"	"	541. 58
N hf of sec		21	"	"	320.
All of		23	"	"	606. 68
W hf of sec		25	"	"	320.
All of		27	"	"	619. 88
All of		29	"	"	640.
All of		31	"	"	619. 08
Sw qr		33	"	"	160.
All of		35	"	"	593. 25
W hf sect, sw qr of ne qr and w hf se qr		1	89	28	414. 08
All of		3	"	"	589. 02
All of		5	"	"	606. 16
All of frc'tl		7	"	"	312. 99
All of		9	"	"	640.
All of		11	"	"	640.
W hf of sect, w hf of ne qr, w hf and se qr of se qr		13	"	"	520.
All of		15	"	"	640.
All of		17	"	"	640.
					12,492. 77

List—Continued.

	Tracts.	S.	T.	R.	Quantity.
60	All of	21	89	28	640.
	All of	23	"	"	640.
All of		25	"	"	640.
All of		27	"	"	640.
All of fract'l		29	"	"	558. 21
All of fract'l		31	"	"	1. 41
All of		33	"	"	640.
All of		35	"	"	640.
W hf of sect, w hf of ne qr, and w hf of se qr		1	90	28	469. 75
All of		3	"	"	642. 18
All of		5	"	"	638. 94
All of		7	"	"	640. 54
All of		9	"	"	640.
All of		11	"	"	640.
W hf of nw qr		13	"	"	80.
All of		15	"	"	640.
All of		17	"	"	640.
All of		19	"	"	640. 13
All of		21		"	640.
All of		23	"	"	640.
Sw qr of nw qr and w hf of sw qr		25	"	"	120.
All of		27	"	"	640.
All of		29	"	"	640.
All of fract'l		31	"	"	490. 27
All of		33	"	"	640.
					13, 881. 43
All of		35	90	28	640.

61 RECAPITULATION.

Amount from fol. column	1	7, 142. 21
	2	14, 610. 62
	3	11, 727. 24
	4	14, 669. 14
	5	15, 691. 19
	6	15, 086. 21
	7	12, 154. 07
	8	11, 171. 91
	9	14, 608. 58
	10	12, 492. 77
	11	13. 881. 43
	12	640.
Acres		143, 908. 37

62 DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 10, 1852.

The selections embraced in the within list are hereby approved in accordance with the views expressed in my letter of the 29th October last to the Commissioner of the General Land Office, subject to any right which may have existed at the time the selections were made known to the land officers by the agents of the State, it being expressly understood that this approval conveys to the State no title to any tract or tracts which may have been sold or otherwise dis-

posed of prior to the receipt by the local land officers of the letter of the Commissioner of the General Land Office communicating the decision of Mr. Secretary Walker, to the effect that the grant extended above the Raccoon Forks.

ALEX. H. H. STUART, *Secretary.*

63 *Schedule A, No. 3.*

GENERAL LAND OFFICE,
January 6th, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of tracts falling to the State of Iowa under act of 8th August, 1846, is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] JOHN WILSON,
Commissioner of the General Land Office.

A list

Showing the vacant lands in the odd numbered sections above the Raccoon Forks, and within five miles of the Des Moines river, so far as the surveys have progressed, falling to the State of Iowa under the act of the 8th August, 1846, as construed by the Secretary of the Treasury in his letter of 2d March, 1849, and of the Secretary of the Interior of the 29th October, 1851, which have not heretofore been approved.

Tracts.	S.	T.	R.	Quantities.
Section	19	89n	28w	446. 84
Lot No. 1	5	91	27	35.
Lot No. 2	"	"	"	41. 28
Sw qr of ne qr	"	"	"	40.
Ne frl qr of nw qr	"	"	"	41. 74
Nw frl qr of nw qr	"	"	"	41. 65
S hf of nw qr	"	"	"	80.
S hf	"	"	"	320.
64 Section	7	91	27	668. 54
W frl hf of nw qr	31	"	"	97.
Sec	5	92	27	691. 80
Sec	7	"	"	658. 24
Sec	9	"	"	640.
W hf of nw qr	15	"	"	80.
Sec	17	"	"	640.
Sec	19	"	"	665. 92
Sec	21	"	"	615. 65
Sec	29	"	"	639. 84
Sec	31	"	"	668. 68
Sec	1	91	28	635. 52
Sec	3	"	"	627. 42
Sec	5	"	"	636. 08
Lot No. 1	7	"	"	12.
Lot No. 2	"	"	"	20.
Sec	9	"	"	640.
Sec	11	"	"	640.

List—Continued.

	Tracts-	S.	T.	R.	Quantities.
	Sec	16	92	28	640.
	Sec	15	"	"	640.
	E hf	17	"	"	320.
	E hf of nw qr	"	"	"	80.
	Lot No. 1	"	"	"	27. 40
	Lot No. 2	"	"	"	39. 20
	Sw qr	"	"	"	160.
	Lot No. 1	19	"	"	37. 30
	Lot No. 2	"	"	"	52. 05
	Lot No. 3	"	"	"	30. 60
	Lot No. 4	"	"	"	68. 35
	Sec	21	"	"	640.
	Sec	23	"	"	640.
	Sec	25	"	"	640.
	Sec	27	"	"	640.
	E hf	29	"	"	320.
	E hf of nw qr, and ne qr of sw qr	"	"	"	120.
65	Lot No. 1	29	91	28	35. 10
	Lot No. 2	"	"	"	43. 55
	Lot No. 3	"	"	"	36.
	Lot No. 4	"	"	"	61. 60
	Lot No. 1	31	"	"	35. 70
	Sec	33	"	"	640.
	Sec	35	"	"	640.
	Sec	1	92	"	690. 80
	Ne frl qr of ne qr	3	"	"	52. 26
	Nw frl qr of ne qr	"	"	"	52. 26
	S hf of ne qr	"	"	"	80.
	Ne of nw qr	"	"	"	52. 26
	Nw of nw	"	"	"	52. 26
	Se of nw	"	"	"	40.
	E hf of se qr	"	"	"	80.
	Nw qr of se qr	"	"	"	40.
	Lot No. 1	"	"	"	33. 30
	Lot No. 2	"	"	"	39. 30
	Lot No. 3	"	"	"	42. 80
	N hf	11	"	"	320.
	Se qr	"	"	"	160.
	Lot No. 1	"	"	"	65. 80
	Lot No. 2	"	"	"	53.
	Sec	13	"	"	640.
	Lot No. 1	15	"	"	15. 40
	Lot No. 2	"	"	"	3. 30
	Sec	23	"	"	640.
	Sec	25	"	"	640.
	Lot No. 1	27	"	"	65. 20
	Lot No. 2	"	"	"	51. 18
	Lot No. 3	"	"	"	36.
	Lot No. 4	"	"	"	62. 80
	Se qr of ne qr	"	"	"	40.
	Se qr	"	"	"	160.
	Lot No. 1	31	"	"	20. 90
66	Lot No. 1	33	92	28	37. 70
	Lot No. 2	"	"	"	36. 27
	Lot No. 3	"	"	"	54. 65
	Lot No. 4	"	"	"	53.
	S hf ne	"	"	"	80.
	S hf	"	"	"	320.
	Sec	35	"	"	640.
	Sec	1	87	29	668. 16
	Ne fr'l qr of ne qr	3	"	"	46. 90
	Sec	1	88	"	679. 73

List—Continued.

	Tracts.	S.	T.	R.	[Quantities.
Sec		3	88	29	733.18
Sec		5	"	"	740.10
Sec		7	"	"	613.28
Sec		9	"	"	640.
Sec		11	"	"	640.
Sec		13	"	"	640.
Sec		15	"	"	640.
Sec		17	"	"	640.
Sec		21	"	"	640.
Sec		23	"	"	640.
Sec		25	"	"	640.
Sec		27	"	"	640.
N hf of ne qr		29	"	"	80.
Sec		35	"	"	640.
Lot No. 1		1	89	29	15.70
Lot No. 2		"	"	"	52.07
Lot No. 3		"	"	"	41.33
Se qr of se qr		"	"	"	40.
Lot No. 1		1	90	29	4.15
Lot No. 1		13	"	"	52.55
Lot No. 2		"	"	"	39.80
Lot No. 3		"	"	"	48.19
Lot No. 4		"	"	"	66.36
Se qr of ne qr		"	"	"	40.
	Se qr	"	"	"	160.
67	Lot No. 1	25	90	29	21.68
	Lot No. 2	"	"	"	52.20
E hf of ne qr		1	88	30	160.56
E hf of se qr		"	"	"	80.
					3,460.59

RECAPITULATION.

Amount brought from folio 1, acres				5,803.66
" " " 2, "				9,614.44
" " " 3, "				4,644.69
" " " 4, "				9,619.05
" " " 5, "				3,360.59
Aggregate, acres				33,142.43

DEPARTMENT OF THE INTERIOR, *December* 17, 1853.

The selections embraced in the within list are hereby approved to the State of Iowa under act of August 8th, 1846, without the prejudice to the rights, if any there be, of other parties.

R. MCCLELLAND, *Secretary.*

68 GENERAL LAND OFFICE, *January 6th*, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copy of a list of tracts falling to the State of Iowa under act of the 8th August, 1846, is a true and literal exemplification from the original now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L.S.]

JOHN WILSON,
Commissioner of the General Land Office.

A list of lands falling within the Des Moines river grant, under act of 8th August, 1846, selected by the State under the act of September, 1841, on the 20th of July, 1850, and erroneously approved 20th February, 1851, previous to the adjustment of the grant and before it was known that they belonged to the State under the Des Moines river grant:

Tracts.	S.	T.	R.	Quantity.	Remarks.
W hf of sw	5	87	26	80.	Embraced by List No. 49
All	7	"	"	597. 92	" "
N hf	9	"	"	320.	" "
S hf	15	"	"	320.	" "
All	19	"	"	609. 18	" "
N hf	21	"	"	320.	" "
W hf	23	"	"	320.	" "
69 Nw qr	27	"	"	160.	" "
W hf of ne, e hf of nw, w hf of se and e hf of sw	29	"	"	320.	" " 51
All	31	"	"	605. 92	" "
N fr'l hf of nw qr and lots 1, 2, 3, 4	1	86	27	241. 56	" "
S hf	11	"	"	320.	" "
Sw qr and w hf of se qr	1	87	27	240.	" " 53
Ne qr	7	"	"	160.	" "
N hf	9	"	"	320.	" "
E hf	11	"	"	320.	" "
All	13	"	"	640.	" " 52
				5, 894. 68	
Lots 3 and 4	15	87	27	113.	Embraced by List No. 52
All	19	"	"	618. 40	" 51
Ne qr, ne qr of nw qr, e hf of se qr and lots 4, 5, 6, 7, 8	23	"	"	475. 50	" 52
Ne qr, e hf of nw, nw of nw, n hf of se, se of se, and lots 1, 2, 3, 4, 5	25	"	"	604. 25	" 51 & 52
W hf	27	"	"	320.	" 51
All	29	"	"	640.	" "
All	31	"	"	626. 44	" "
E hf	33	"	"	320.	" "
W hf of ne, se qr and e hf of nw qr	31	88	27	320.	" 53
Se qr	3	87	28	160.	" 50
Ne qr	11	"	"	160.	" "
E hf of se, nw of se and lots 1, 2, 3	5	88	28	252. 44	" "
W hf and ne qr	7	"	"	468.	" "
E hf and n hf of nw qr	11	"	"	400.	" 54
Sw qr	13	"	"	160.	" "
W hf of sw qr	17	"	"	80.	" 50
E hf of ne qr	19	"	"	80.	" "
S hf	21	"	"	320.	" "
E hf	25	"	"	320.	" 53
N hf and se qr	33	"	"	480.	" " 50
				6, 918. 93	
Am't brought over				5, 894. 58	
Acres				12, 813. 51	

70 DEPARTMENT OF THE INTERIOR, *December* 30, 1853.

The sections embraced in the within list are hereby approved to the State of Iowa, under act of August 8, 1846, without prejudice to the rights, if any there be, of other parties.

R. McCLELLAND, *Secretary.*

71 *Schedule B.*

Parts of section.	Sec.	Town.	R'ng.	Area.
W half NW qr and SE qr NW qr (Hamilton C.)	31	86	26	120.00
W half SW qr	5	87	26	80.00
E half NW qr and NE qr SE qr	17	"	"	120.00
NE qr NW qr	21	"	"	40.00
SW qr and W half SE qr	23	"	"	240.00
All of	27	"	"	640.00
E half SW qr and NW qr SW qr	29	"	"	120.00
All of	33	"	"	640.00
All of	35	"	"	640.00
N half	31	88	26	290.49
SW qr (Webster)	5	86	27	160.00
NE qr NE qr	9	"	"	40.00
Lots 6 and 7	21	"	"	88.93
E half SW qr	7	87	27	80.00
Lot 2	15	"	"	60.25
N half NW qr, and lot 6	17	"	"	132.70
SE qr and S half SW qr	19	"	"	240.00
Lots 1 and 5	21	"	"	54.38
Lot 1	23	"	"	1.90
NW qr	33	"	"	160.00
E half	5	88	27	349.55
All of	7	"	"	598.86
W half	15	"	"	320.00
E half	29	"	"	320.00
W half NE qr W half and SE qr	19	89	27	483.92
E half	33	89	27	320.00
E half SW qr, W half SE qr and W half NW qr	35	"	"	240.00
72 NE qr and N half NW qr (Humboldt.)	5	92	27	291.80
S half	7	"	"	329.40
W half NW qr	15	"	"	80.00
All of	19	"	"	665.92
W half W half NE qr W half SE qr and lots 1, 2, 3 and 4	21	"	"	115.65
W half SE qr NE qr SE qr and lot 1	29	"	"	159.84
W half NE qr and E half NW qr (Webster.)	1	86	28	153.93
SW qr	11	"	"	160.00
W half NW qr	13	"	"	80.00
SE qr and NW qr	23	"	"	320.00
NW qr	25	"	"	160.00
All of	7	87	28	621.98
SE qr E half SW qr and NW qr	11	"	"	400.00
SW qr	13	"	"	160.00
W half	15	"	"	320.00
N half NW qr and W half SE qr	21	"	"	160.00
N half SW qr SE qr and S half NE qr	23	"	"	320.00
W half	27	"	"	320.00
S half E half NW qr and NE qr	35	"	"	560.00
Lots 1, 2 and 3 E half SE qr and NW qr SE qr	5	88	28	252.44
NW qr NW qr	15	"	"	40.00
W half SW qr	17	"	"	80.00
NW qr	1	89	28	134.03
E half and NW qr	3	"	"	429.02
NE qr NE qr and lots 3, 4, 5 and 6	7	"	"	198.39
All of	9	"	"	640.00
E half NE qr SW qr	17	"	"	369.00
All of	21	"	"	640.00
S half SW qr SW qr NE qr and SE qr NW qr	23	"	"	160.00
73 E half and SW qr	25	89	28	480.00
NE qr	27	"	"	160.00

Schedule B.—Continued.

Parts of section.	Sec.	Town.	R'ng.	Ares.
Lot 1	43	89	23	1.40
N half E half SW qr and W half SE qr	35	"	"	480.00
W half NW qr	13	90	28	80.00
All of	17	"	"	640.00
W half	35	"	"	320.00
NW qr (Humboldt.)	3	91	28	154.57
All of	5	"	"	636.08
All of	9	"	"	640.00
SW qr	15	"	"	160.00
E half	17	"	"	320.00
NE qr	21	"	"	160.00
W half	23	"	"	220.00
W half	25	"	"	320.00
All of	27	"	"	640.00
E half E half NW qr NE qr SW qr and lots 1, 2, 3 and 4	29	"	"	616.25
All of	33	"	"	640.02
All of	1	92	28	690.80
NE qr N half NW qr SE qr NW qr E half SE qr NW qr SE qr and lots 1, 2 and 3	3	"	"	564.00
All of	13	"	"	640.00
NE qr	23	"	"	160.00
NW qr S half and S half NE qr	25	"	"	560.00
Lots 3 and 4	27	"	"	98.80
Lots 3 and 4	33	"	"	107.65
S half (Webster)	1	87	29	320.00
All of	1	88	29	688.39
All of	11	"	"	640.00
All of	13	"	"	640.00
74 All of	17	88	29	620.00
S half	23	"	"	320.00
All of	35	"	"	640.00
Lot 1	1	90	29	4.15
E half NE qr and E half SE qr	1	88	30	186.02

75 Application having been made to me for an injunction in this case, it is ordered that the hearing of said application be set for the 7th day of July, A. D. 1868, before me at Keokuk, and that plaintiff serve on the defendants notice of the time and plea of the hearing at least ten days previous thereto, and in the meantime the defendants are hereby restrained from excercising any of the functions of their offices as receiver and register in reference to any of the lands in the counties of Webster, Hamilton and Humboldt, at any time certified to the State of Iowa, as part of the Des Moines river improvement grant, until further order made herein; and the plaintiff shall also serve on the defendant a copy of this order, certified under the seal of the Circuit Court.

Witness my hand this 8th day of June, A. D. 1868.

(Signed) SAM. F. MILLER,

Asso. Judge Sup. C. U. S.

United States Circuit Court.

EDWIN C. LITCHFIELD, complainant,
vs.
CHARLES B. RICHARDS, REGISTER & CHARLES, Pomroy, Receiver of the United States Land Office, at Fort Dodge, Iowa, defendants. } In chancery.

76 STATE OF IOWA, *Polk County, ss*:

I, W. G. Woodward, clerk the United States Circuit Court, in and for the district of Iowa, do hereby certify that the above and foregoing copy of order is a true copy of the original order, made by Hon. Samuel F. Miller, associate justice of the Supreme Court in the above-entitled action, and which said order is now on file in my office, and was made and allowed on the original bill filed herein.

In witness whereof I have hereunto set my hand and affixed the seal of the said Circuit Court, at Des Moines, in the State of Iowa, the 10th day of June, A. D. 1868.

W. G. WOODWARD,
Clerk of the United States Circuit Court for the District of Iowa.

STATE OF IOWA, *Webster County*:

I, Benjamin Grayson, of said county of Webster, being duly sworn, do, on oath, depose and say: That on the twelfth day of June, A. D. 1868, at Fort Dodge, in said county, I served on Charles B. Richards, register, & Charles Pomeroy, receiver of the United States
77 land office, at Fort Dodge, Iowa, duplicate copies of the order and certificate of clerk of United States Circuit Court by delivering to them, and each them a duplicate copy of the foregoing order and certificate, with the seal of said clerk of the Circuit Court of the United States affixed to the certificate as above.

BENJAMIN GRAYSON.

Subscribed and sworn to before me, by Benjamin Grayson, this twelfth day of June, A. D. 1868.

In testimony whereof I have hereto set my hand and official seal the day and year last above written.

[L. S.] WOOLSEY WELLS,
Notary Public for Webster County, Iowa.

United States Circuit Court.

78 *Notice to Def'ts.*

EDWIN C. LITCHFIELD, complainant,
vs.
CHARLES B. RICHARDS, Register, & CHARLES Pomroy, Receiver of the United States land office at Fort Dodge, Iowa, defendants. } In ch'y.

To the above-named defendants:

You and each of you are hereby notified that the annexed copy with which you are herewith served, is a true copy of the original bill now on file in this action, and that upon said original bill, an application will be made to Hon. Saml. F. Miller, associate justice of the Supreme Court of the United States, at his chambers in the city of Keokuk, on the 7th day of July, 1868, at 10 o'clock in the forenoon of that day, for the allowance of an injunction against you as prayed for in said bill. The time and place above specified being the time and place set for hearing of said application by said associate justice.

June 10, 1868.

Yours, &c.,
J. M. ELLWOOD,
Solicitor for Compl't.

79 On the back of said notice is the following endorsement, to-wit:

STATE OF IOWA, *Webster County, ss:*

I, B. Grayson, of said Webster county, being duly sworn, do depose and say: That on the 25th day of June, 1868, at Fort Dodge, in said county, I served copies of the within and foregoing notice, and of the bill hereto annexed, upon Charles B. Richards, register, and Charles Pomroy, receiver of the United States land office at Fort Dodge, Iowa, by delivering true copies of such notice and bill to said Richards & said Pomeroy, and leaving the same with them respectively.

B. GRAYSON.

Sworn to by B. Grayson this 25th day of June, A. D. 1868.
[L. S.] WOOLSEY WELLS,
Notary Public in and for Webster Co, Iowa.

80 And afterwards, to wit, on the 7th day of July, A. D. 1868, an order was made by Hon. Samuel T. Miller, associate justice of the Supreme Court of the United States, in words and figures following, to wit:

EDWIN C. LITCHFIELD
vs.
RICHARDS, Register, POMEROY, Receiver.

This day the motion of plaintiff for an injunction came before the undersigned, a justice of the Supreme Court of the United States for the district of Iowa, and after hearing the argument of counsel and being advised, the application is sustained and the writ of injunction allowed.

The clerk of the said court at Des Moines will issue a writ of injunction as prayed for in said petition, restraining and enjoining the defendants from receiving, filing, hearing, or in any way considering any application for homestead or pre-emption in lands certified to the State of Iowa for the use of the Des Moines river improvement grant in the counties of Webster, Humboldt and Hamilton, more fully described in the bill filed.

And it is further ordered that defendants have leave to move for a dissolution of this injunction at any time before me, on due
81 and reasonable notice to plaintiff, which is one of the conditions on which this order is granted, and that the writ do not issue until plaintiff shall file with the clerk a bond, with sureties to be approved by said clerk, in the sum of $1,000, conditioned to pay all costs and damages which may be awarded against plaintiff by reason of said injunction.

July 7, 1868.

(Signed) SAM. F. MILLER, *Judge.*

82 And afterwards, to wit. the 16th day of July, A. D. 1868, there was filed and approved by the clerk of said court an injunction bond, in the words and figures following:

Know all men by these presents, that we, Edwin C. Litchfield, as principal, and John Browne and J. B. Stewart, as sureties, inhabitants and residents of Polk county, of the State of Iowa, are held and firmly bound unto Charles B. Richards, register, and Charles Pomeroy, receiver of the United States Land Office at Fort Dodge, Iowa, in the penal sum of one thousand dollars ($1,000), lawful money of the United States of America, to the payment of which well and truly to be made we bind ourselves, our heirs and legal representatives, jointly and severally. Sealed with our seals and dated this 8th day of July, A. D. 1868.

Whereas the above bound Edwin C. Litchfield did, on the 8th day of June, A. D. 1868, file in the Circuit Court of the United States for the district of Iowa his bill in chancery, praying for an injunction restraining the said defendants, Charles B. Richards and Charles Pomeroy, register and receiver of the U. S. Land Office at Fort Dodge, Iowa, from allowing and granting homestead and pre-emption entries, and issuing certificates of pre-emption and homestead entry of, to, and upon the lands situate in the counties of Hamilton, Webster and Humboldt, and which lie in the alternate (odd

83 numbered) sections, within five miles of the Des Moines river, and above the Raccoon Forks; and whereas, upon due notice to the said register and receiver, the prayer and application for such injunction has been granted and allowed by the said court, and the clerk of said court directed to issue the writ in said bill prayed for upon the filing of a bond of said Litchfield in the penal sum of one thousand dollars ($1,000,) as by law required:

Now therefore the condition of this obligation that if the said Edwin C. Litchfield shall pay to the said Charles B. Richards and Charles Pomeroy, as register and receiver of the land office at Fort Dodge, Iowa, such damages as they may sustain by means of said injunction, and all damages and costs which may be adjudged against him on account thereof, then this obligation to be void; otherwise in full force and effect.

EDWIN C. LITCHFIELD,
By John Browne, his Att'y-in-fact.

[L. S.] J. BROWN.
[L. S.] J. B. STEWART.

84 *Injunction.*

UNITED STATES OF AMERICA, *District of Iowa*:

The President of the United States to Charles B. Richards, register, and Charles Pomeroy, receiver of the United States land office at Fort Dodge, Iowa, greeting:

Edwin C. Litchfield, for and in behalf of himself and others, has lately exhibited his bill against you, to be filed in the office of the clerk of the Circuit Court of the United States for the district of Iowa, stating, among other things, that they are the owners of certain lands in the counties of Webster, Hamilton and Humboldt, and that you, as register and receiver, are about to allow and grant homestead and pre-emption entries and issue certificates thereof to application therefor, upon portions and tracts of lands lying in the alternate and odd numbered sections within five miles of the Des Moines river, above or north of the Raccoon Fork, and within the counties aforesaid and that your acts are contrary to law.

In the name and by the authority of the President of the United States, you, the said register and receiver, and all under you, under the penalties of the law provided, are hereby strictly com-
85 manded and required that you do absolutely desist and refrain from filing, receiving, hearing, investigation, and deciding claims or application granting or allowing homestead entries and pre-emption entries, or either of such entries, for or out of any of the lands certified to the State of Iowa by the general government as part of the Des Moines river improvement grant, and situate in the counties of Webster, Hamilton and Humboldt; and this injunction you will observe until the same is dealt with in the Circuit Court of the United States for the district of Iowa, order otherwise, and make no disposition of said land in any way whatever until the further order of this court.

Witness the Hon. S. P. Chase, Chief Justice of the Supreme Court of the United States, at Des Moines, this 8th day of July, A. D. 1868. In witness whereof I have hereunto set my hand and seal of the Circuit Court of the United States for dist. of Iowa.

[L. S.] W. G. WOODWARD, *Clerk.*

Marshal's return.

This writ of injunction came into my hands for service on the 9th day of July, A. D. 1868, and I served the same on the within named Charles B. Richards and Charles Pomery, receiver and register, by reading and delivering a copy to each of them on the 11th day of July, A. D. 1868, in the city of Fort Dodge, Iowa.

G. W. CLARK, *U. S. Marshal.*

Fees, $10 10.

86 And afterwards, to wit, on the 24th day of August, A. D. 1868, the defendants, by their counsel, enter their appearance.

E. C. LITCHFIELD
vs.
CHARLES B. RICHARDS, Register, and Charles Pomeroy, Receiver of the United States Land Office at Fort Dodge, Iowa. } In chancery.

I appear for the above-named defendants, and the clerk of this court will please enter their appearance accordingly.

Aug. 20th, A. D. 1866.

GALUSHA PARSONS,
Def'ts' Att'y.

Filed Aug. 24th, 1868.

W. WOODWABD, *Clerk.*

87 And afterwards, to wit, on the 27th day of Oct., A. D. 1868, there was filed in the office of the clerk of said court, a motion to dissolve the injunction herein, and to dismiss complainant's bill, in words and figures following, to wit:

EDWIN C. LITCHFIELD
vs.
CHARLES POMEROY, Register, and CHARLES Richards, Receiver, of the United States Land Office at Fort Dodge, Iowa.

Now comes the defendants, by Galusha Parsons, their attorney, and moves the court upon the bill herein, to dissolve the injunction granted in this case, and to dismiss the bill of the complainant upon the ground that the same does not state sufficient to call for the equitable relief therein demanded.

GALUSHA PARSONS,
Defendants' Att'y.

88 And afterwards, to wit, on the 28th day of October, A. D. 1868, the same being at the October term of said Circuit Court, this cause came on for hearing on the def'ts motion to dissolve the injunction heretofore granted in this case:

Present: Hon. Sam. F. F. Miller, circuit judge, J. M. Love, district judge—

When the following was ordered of record, to wit:

EDWIN C. LITCHFIELD
vs.
CHARLES B. RICHARDS, Register, and Charles Pomeroy, Receiver of the United States Land Office, at Fort Dodge, Iowa.

This cause having come on to be heard upon the defendant's motion to dissolve the injunction herein, and to dismiss the complainant's bill for want of equity.

And after hearing the said parties, by their respective counsel, it is ordered that said injunction be dissolved and the said bill dismissed; and it is further ordered and decreed that the defendants recover the costs herein, to wit, the sum of $, and that execution issue therefor.

(Signed) SAM. F. MILLER, *Judge.*

89 And afterwards, to wit, on the 30th day of October, 1868, a petition for an allowance of an appeal herein was filed in the office of the clerk of said court in words and figures following, to wit:

EDWIN C. LITCHFIELD
vs.
CHARLES B. RICHARDS, Register, and Charles Pomeroy, Receiver of the United States Land Office, at Fort Dodge, Iowa.

Now comes the complainant and petitions this court for the allowance of an appeal herein to the Supreme Court of the United States in the above-entitled action, decided at the present term of this court.

J. M. ELLWOOD,
Sol. fr. Compl't.

The appeal in the above cause is allowed as prayed for in the above petition in open court.

SAM. F. MILLER, *Judge.*

Oct. 30th, 1868.

90 And on the same day, to wit, Oct. 30th, A. D. 1868, there was filed in the office of the clerk of said court an appeal bond in words and figures following, to wit:

Bond.

EDWIN C. LITCHFIELD
vs.
CHARLES B. RICHARDS, Register, CHARLES Pomeroy, Receiver of the United States Land Office at Fort Dodge, Iowa. } On appeal.

Know all men by these presents that we, Edwin C. Litchfield, as principal, and John Browne as sureties, are held and firmly bound unto the above-named Charles B. Richards, register, and Charles Pomeroy, receiver of the United States land office at Fort Dodge, Iowa, in the sum of five hundred dollars, to be paid to said Richards and Pomeroy, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators. Sealed with our seals and dated the 30th day of October, A. D. 1868.

Whereas the above-named Edwin C. Litchfield has prosecuted an appeal to the Supreme Court of the United States, to reverse the judgment and decree rendered in the above-entitled suit, by
91 the Circuit Court of the United States for the district of Iowa:

Now therefore the condition of this obligation is such that the above-named Edwin C. Litchfield shall prosecute his said appeal and answer all damages and costs if he fail to make good his plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] EDWIN C. LITCHFIELD.
[L. S.] J. BROWNE.

Sealed and delivered in presence of—
EDWARD H. LITCHFIELD.

Approved Oct. 30th, 1868.

SAM. F. MILLER, *Judge.*

92 UNITED STATES OF AMERICA, *ss:*

To Charles B. Richards, register, and Charles Pomeroy, receiver of the United States land office at Fort Dodge, Iowa, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to an appeal allowed and filed in the clerk's office of the Circuit Court of the United States for the district of Iowa, wherein Edwin C. Litchfield is complainant and you are respondents, to show cause, if any you have, why the judgment and decree of the court in said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Sam'l F. Miller, justice of the Supreme Court of the United States, this 30th day of October, in the year of our Lord A. D. 1868.

SAM. F. MILLER,
Justice of Supreme Court of the United States.

Endorsed: Circuit Court. Edwin C. Litchfild, compl'ts, *vs.* Chas. B. Richards, register, and Chas. Pomeroy, receiver of the United States Land Office, at Fort Dodge, Iowa, respondents. Citation. Circuit Court. Edwin C. Litchfield *vs.* Chas. B. Richards, register, and Chas. Pomeroy, receiver. Citation. I hereby admit and accept service of the within citation, this 30th day of October, 1868. Galusha Parsons, def'ts att'y.

93 CIRCUIT COURT OF THE UNITED STATES,
District of Iowa:

I, W. G. Woodward, clerk of the Circuit Court of the United States for the district of Iowa, hereby certify that the above and foregoing is a full, true, and complete transcript of the proceeding had in said Circuit Court in the above-entitled cause, as full, true, and complete as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and [and] the seal of said court. Done at the city of Des Moines, this 30th day of Nov. A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

Fees for transcript	12 00
Express charges	1 50
Paid by plaintiff	$13 50

W. G. W., *Clerk.*

Supreme Court of the United States.

No. 392. December Term, 1868.

EDWIN C. LITCHFIELD,

Appellant,

versus

CHARLES B. RICHARDS, Register, and CHARLES POMEROY, Receiver of the United States Land Office at Fort Dodge, Iowa.

ARGUMENT FOR APPELLANT.

EDWIN C. LITCHFIELD, of Counsel,

and Appellant in person.

NEW YORK:

EVENING POST STEAM PRESSES, 41 Nassau St., cor. Liberty.

1869.

Supreme Court

OF THE UNITED STATES.

No. 392.—December Term of 1868.

Edwin C. Litchfield, Appellant, *vs.* Charles B. Richards, Register, and Charles Pomeroy, Receiver of the United States Land Office, at Fort Dodge, Iowa, Defendants.	(Argument for Appellant.)

This is an appeal from a decree of the United States Circuit Court for the district of Iowa, dismissing the complainant's bill for want of equity.

The complainant is a citizen of the State of New York, and the defendants are citizens of the State of Iowa, holding office as Register and Receiver of the United States Land Office, at Fort Dodge.

The complainant alleges that he is the owner in fee simple of a large quantity of lands situated in Iowa, and specified upon a list marked B, annexed to the complaint; that his title was derived from the State of Iowa and its grantees; and that the

State of Iowa derived title under and by virtue of a grant made by Congress, by an Act approved 8th August, 1846, for the purpose of aiding in the Improvement of the Des Moines River. The bill alleges that the Act was accepted by the State, and the extent of the grant was decided and defined by the proper and authorized officers of the United States, and the lands thereby granted to the State were selected by the officers and agents of the State, and the selections were approved by the proper and authorized officers of the General Government; and that the lands were duly selected, certified and approved to the State, by the Commissioner of the General Land Office, and Secretary of the Interior, as passing to the State under and by virtue of the said Act of Congress of the 8th August, 1846.

Copies of the official certified lists, executed by the Commissioner and Secretary in 1851, '52 and '53 are annexed to the bill, and marked *A No.* 1, *No.* 2, *No.* 3 and *No.* 4.

The bill alleges that ever since 1848, all of the lands so certified have been duly withdrawn from sale, and reserved, as passing to the State of Iowa under said grant; that they have not at any time been subject to entry by purchasers, nor to pre-emptions, nor to homestead or other entries as public lands, but have been specially appropriated to the purpose of satisfying the grant made by the Act aforesaid.

That all the executive departments of the General Government, as well as the authorities of the State of Iowa, supposed that the lands embraced in said certified lists had been lawfully transferred to the State, and that the title to the same had been vested in the State by the Act of Congress, and the lists and approval aforesaid. And that the State had thereafter proceeded to deal with the lands as its own, and had sold portions of them to individuals; and in 1854 had sold the remainder to an Improvement Company, which undertook the improvement of the river, as contemplated in said Act of Congress; and expended large sums of money in compliance with said contract; and that in May, 1858, the State, under the authority of a joint resolution of the General Assembly thereof, and upon a final settlement with said company, executed its deeds and patents conveying all of the said lands to the said company; and that

said company afterwards conveyed to the complainants the lands so owned by him and set forth in Schedule B.

The bill states that in 1859–60 this Court, in the case of *Litchfield* vs. *Dubuque and Pacific R. R. Co.*, 23 *Howard*, 66, decided that the grant made by the Act aforesaid did not extend above the Raccoon Fork, and the bill sets forth that all the lands in Township 79 to 92, inclusive, contained on said certified lists, are situated above the said Raccoon Forks.

It is further alleged, that, in order to carry out and give effect to the construction which had been put upon said Act of 8th August, 1846, and in order to confirm to the State of Iowa and its grantees the title to all the lands which had been certified and approved as aforesaid, under said Act, and in order to extend said grant to the northerly boundary of the State, the Congress of the United States passed the Joint Resolution of 2d March, 1861, and the act of 12th July, 1862, in said bill of complaint referred to.

It is also alleged that all of the lands embraced in said certified lists, which had been surveyed at the date of the decision by the Secretary, that the grant extended to the northern boundary of the State—that is, March, 1849,—were withdrawn from sale by the proper order of the Commissioner; and the remainder of said lands were afterwards withdrawn as fast as surveyed; and that as early as 1851, or 1852, all of the lands contained on said lists had been by the general Government duly withdrawn from market and withheld and reserved from entry and sale and pre emption, and set apart and appropriated to the said supposed grant of the 8th August, 1846; and that "said reser-" vation so made and declared and established by the proper and " competent authority, has never been revoked or withdrawn, or " in any way countermanded or reversed, but that the same still " exists and remains unrevoked and operative, and in force;" " and that by reason of such reservation the said lands have not " since been subject to sale or pre-emption;" " and that to said " lands no pre-emption rights have attached, or could attach, by settlement or otherwise."

The bill states that the lands set forth in Schedule B, were duly conveyed to the complainant before the commencement of the suit; and that they still "owned, and the title thereto held"

by the said complainant; that said lands are all "included and specified in said certified lists, made under the Act of the 8th August, 1846, and fall within, and are covered by, and embraced and included in the said reservation, and are not, and have not heretofore been subject to entry, or sale, or settlement, or pre-emption."

It is further alleged that "after the withdrawal and reservation aforesaid, and while the same was in force, and withheld such lands from settlement and pre-emption, certain persons wrongfully, and without authority of law, and in utter disregard and in violation and defiance of the said reservation, entered and assumed to make settlements upon some of said lands," and now pretend by virtue of such pretended settlements, to be entitled to pre-empt said lands; and some of said persons have already made, and others are about to make application to the defendants (as Register and Receiver of the United States Land Office at Fort Dodge) to pre-empt said lands, and for certificates of pre-emption, or homestead entry, to the end that they may receive patents therefor, and acquire a color of title to said lands; that said defendants, as Register and Receiver, have already allowed homestead entries, and granted certificates of pre-emption upon some of said lands; and are about to grant and allow homestead entries and pre-emptions, and to issue certificates thereof to other persons applying therefor, for the purpose of aiding them in obtaining patents therefor from the United States;" and that none of such lands are subject to pre-emption or homestead entries; "that neither said defendants, as such Register and Receiver, nor any other officers of the United States, under the laws thereof had or have any right or authority to allow the homestead entries, or the pre-emption entries upon said lands;" that "all such entries allowed or about to be allowed, are not only without authority of law, but in direct conflict with, and in violation of the pre-emption laws of the United States;" that said defendants, as such Register and Receiver, notwithstanding the absence of all lawful authority so to do, have allowed homestead entries and pre-emptions, and issued certificates thereof to a large number of said persons, and "persist in allowing such entries against the remonstrances of the complainant, and declare their purpose and intention to al-

low still further homestead entries and pre-emptions;" all of which acts of the defendants are "unauthorized by and contrary to, and in violation of law, and tend directly to embarrass and cloud the title of the complainant to his said lands;" and that many of the lands upon which the defendants, as Register and Receiver, are about to allow homestead entries and pre-emptions as aforesaid, are *valuable timber* lands; and that the persons so receiving pre-emption and homestead certificates, under color of title created thereby, are cutting down, destroying and carrying away from the said lands, and converting and disposing of large quantities of timber, standing and growing thereon, to the great injury of said lands, and the depreciation of the value thereof.

And that said defendants, as such Register and Receiver, "though they well know that said lands, and the whole thereof, "are not subject to homestead entries and pre-emption rights, "but belong to the complainant, * * are almost daily permit- "ting persons, applying so to do, to file declaratory statements, "alleging settlements, and intentions to pre-empt particular "tracts of said lands, all of which tends to cast a cloud upon "the title of the complainant, and to create a color of title ad- "verse to him."

The bill alleges further, that the complainant "has com- "menced actions in the proper local Courts for the purpose of "settling and quieting the title as against the persons claiming "the right of pre-empfion or homestead entries, and for the "purpose of setting aside and cancelling all pre-emption or "other entries allowed thereon, and confirming complainant's "title thereto, which actions are still pending and undetermined "in the said Courts."

The bill alleges that there are a large number of other persons, non-residents of the State of Iowa and citizens of New York and Ohio, who hold titles to some of said lands, included in said certified lists, but whose names are unknown to the complainant; and that the questions arising in this action are of common interest; and that it is impracticable to bring all of said parties before the Court; wherefore the complainant seeks the same relief for said parties as for himself.

The bill alleges that the acts complained of and threatened by the defendants are contrary to equity, and tend to injure

the complainant and the other persons in whose behalf he complains; and that neither he, nor they, have any relief except in a Court of Equity; and that the defendants will continue to allow homestead entries and pre-emptions on said lands, and to grant certificates thereof, to the great injury of the complainant and other parties, unless they are restrained by injunction.

The bill prays for an injunction to restrain the defendants from granting homestead and pre-emption entries upon any of said lands, and granting certificates thereof, and from filing or allowing to be filed in their respective offices declaratory statements, preliminary to pre-emption thereof, until the final hearing and determination of the suits, so as aforesaid, commenced for the purpose of settling the title to said lands, and determining whether they are liable to homestead or pre-emption entries; and that on the final hearing the injunction be made perpetual; and for other relief, &c.

A preliminary injunction had been granted, and the cause came on to be heard upon the defendants' motion to dissolve the injunction, and to dismiss the bill for want of equity; and after argument it was "ordered, adjudged and decreed, that the injunction be dissolved, and the bill dismissed;" and that the defendants recover costs, &c. From this decree the complainant appeals.

The Court below was confined to the consideration of the single question, whether the complainant, *upon the face of his bill*, had shown facts which entitled him to relief in a Court of Equity.

2 *Black*, 519 *Giffing, vs. Gibb.*

In his bill the complainant sets up title in himself, and recites the laws and acts of the Executive Departments which he alleges have transferred the title from the United States, and vested it in him. If the defendants wish to justify their action as Register and Receiver by insisting that the title is in the United States, they should do so by answer, and have that question tried by the Court; for "the question whether a right has vested or not is in its nature judicial, and must be tried by the judicial authority." 1 *Cranch, p.* 167. This was the course

taken in *Wilcox vs. Jackson*, 13 *Peters*, 498, where Wilcox, who was a military officer, holding the land as a military post under orders of the Secretary of War, and without any personal interest, was sued in ejectment by a party claiming title. The question of title as between the claimant and the United States was thus brought to a distinct issue, and was tried and determined by the Court. The Court recognized the propriety of that mode of trying the title: and in the opinion (page 516) spoke of the suit as "being in effect against the United States": and went into an elaborate examination of the proofs, and of the law, for the purpose of determining whether the land belonged to the claimant or to the Government. But in the case under consideration the defendants, instead of setting up title in the United States, and relying upon that as their justification, and bringing that issue to a trial before the Court, were content to rely upon the case as made by the plaintiff, and moved that "the bill be dismissed for want of equity," and the Court below decreed accordingly.

The case then is this: The defendants stand before this Court admitting every allegation made in the complaint, and setting up nothing in reply.

Admitting that the lands in question are the property of the plaintiff, and that the Government has no interest in them, and that they know that neither themselves nor any other officers of the United States have any lawful right to offer them for sale, or to grant pre-emption or homestead entries upon them, and that they are not subject to such entries, they still admit that they are granting such entries, and threaten to continue to do so, to the plaintiff's great and manifest injury, clouding his title, and depreciating the value of his property.

Their sole excuse is that they are executive officers, responsible only to their official superiors, and they claim that they can not be interfered with in their proceedings by the action of the Courts.

The complaint may be condensed into a few general propositions, which are alleged in the bill, and being undisputed upon the record, are fully admitted for all the purposes of this case:

First.—The complainant is the owner of the lands specified in Schedule B, annexed to the complaint, and holds the title to the same in fee simple.

Second.—All of said lands, with other lands appearing on the certified lists annexed to the bill, were, in 1851-'52 and '53, certified and approved to the State of Iowa, by the General Land Office and the Secretary of the Interior, as passing to said State under the Act of Congress of August, 1846, for improving the Des Moines River; and said certificates have never been cancelled: And the State, prior to 1861, sold them to *bona fide* purchasers, from whom the complainant derived his title. When this Court, in 22 How., 66, decided that said grant did not extend above the Raccoon Fork of the Des Moines River, Congress passed the Joint Resolution of 2d March, 1861, and the Act of 12th July, 1862, for the purpose, and with the intent to confirm and carry into full effect the acts of the Government officers in transferring said lands to the State, and to confirm the titles to said lands in the State of Iowa and its grantees.

Third.—From 1848 and 1849, to the present time, said lands have been withdrawn from sale by the proper officers of the Government, having charge of the public lands, and with full authority so to do; and have been by them uniformly withheld from sale, or pre-emption, or homestead, or other entries, and duly reserved to the United States, as having been appropriated to the grant supposed to have been made by the Act of 8th August, 1846, which reservation has never been countermanded or revoked, and is still in full force; and said lands are not now, and never have been subject to pre-emption or homestead entries, and no rights of pre-emption or homestead entry have attached or could attach to them.

Fourth.—Neither the defendants, nor any other officers of the General Government, have any lawful right to grant pre-emptions or homestead entries on said lands. All such pre-emptions and entries are contrary to law, and in direct violation of the provisions of the acts of Congress relating to that subject. "The defendants well know that none of said lands are subject to homestead or pre-emption rights, and that they belong to the complainant." But they have granted to many persons certificates of pre-emption and of homestead entry on said lands, and

threaten to continue to grant them to other parties who may apply for them; and they persist in doing so against the complainant's remonstrance, and to his great injury; thereby tending to cloud his title, and to give color of adverse title, and furnishing color of title to parties, who, under cover thereof, cut and carry away, and destroy timber from the complainant's lands, and depreciate their value, and render them unsaleable.

Such are the allegations *made and admitted* on this record.

Is the complainant entitled to relief in a Court of Equity? May he have the injunction order of the Court to arrest this admitted wrong, to prevent this wilful and continued trespass upon his rights, and the issuance of innumerable incipient paper titles—each worthless in itself, but giving color under which irresponsible parties may commit depredations upon his property, or must he submit in silence until the injury is consummated, and then be forced to bring hundreds of actions against as many different trespassers, in order to determine questions which may as well be settled in this one suit?

Are the defendants, who admit upon the record, that they are acting without authority, and in violation of law, to be held responsible for the injury they are committing, and be restrained by the Courts, or will the Courts refuse to take jurisdiction, and arrest the wrong, *merely* because the defendants are executive officers, although not acting as such, nor justified by law, in the matters complained of?

To the complainant these questions seem to admit but of one answer; and he would not feel justified in arguing the case at length, were it not that the Court below, notwithstanding the facts admitted on the record, decided against his right to relief.

He submits that the decree of the Court below dismissing the bill, was erroneous, and should be reversed.

[The bill relates to lands owned by other parties than the complainant—as well as to the lands owned by him alone—and seeks an injunction in behalf of all the parties. But this argument is limited to the lands of the plaintiff set forth in Schedule B, and to his right to have the relief demanded in respect to those lands.]

First Point.—The complainant is the absolute owner, in fee simple, of the lands in question. The United States have no remaining title or interest in them, either legal or equitable; and the defendants, as officers of the Government, have no authority to deal with them as public lands, or to grant pre-emptions, or to allow homestead or other entries.

I. The bill distinctly affirms that the complainant is the owner in fee simple of the lands; that neither the defendants, nor any other officer or officers of the Government have any right to grant pre-emptions or homestead entries therein; that the attempt to do it is contrary to law, and in direct violation of the Statute; "that defendants *well know that said lands are not subject to pre-emption or homestead entries, but belong to the complainant.*"

All these allegations being undenied, are admitted. *As matter of fact*, then, this point is admitted upon the record.

II. In addition to this admission, the Court can see, as matter of law, from the facts stated, that the plaintiff's title to the lands in question is beyond controversy.

The proper officers of the United States *decided* in 1849, that these lands belonged to the State of Iowa, as a part of the grant made by the Act of 8th August, 1846; and in 1851-2-3, in execution of that decision they were certified and approved to the State under that Act. When this Court, in 23 Howard, 66, decided that that grant did not extend above the Raccoon Fork of the Des Moines River, Congress passed the Joint Resolution of 2d March, 1861, and Act of 12th July, 1862, which confirmed to the State, and its grantees, the title to all the lands which had been certified under the Act aforesaid, including those of the complainant herein.

That such was the legal effect of these Acts was determined by this Court in 5 *Wallace*, 681, 8 *Wolcott* v. *Des Moines Company*.

The title of the complainant, shown in this suit, is identical with the titles of Wolcott and Burr, which this Court decided to be good in the two judgments there reported.

The certificates issued to the State by the Land Office, and approved by the Secretary, are declared by the Act of Congress of 3d August, 1854, to have the force of patents.

The effect of a patent (or of the certified lists, which are substitutes for patents) is well stated by this Court in 3 *Wallace*, 478, *Beard* v. *Federy*. "In the first place (said the Court at page 491) it is a deed conveying the interest of the United States in the land: In the second place * * * it is record evidence of the action of the government upon the title of the claimant. * * * *As against the Government, this record, so long as it remains uncancelled is conclusive:* and it is equally conclusive against parties claiming under the Government by title subsequent."

The certified lists thus issued by the Land Department to the State were formal official acts, which were intended to convey the title, and which were understood by the executive officers, as well as by the State and its grantees, to have that effect.

Thereafter the State dealt with the lands as its own, and sold and conveyed them to numerous grantees, and no one doubted the validity of the title, until this Court, in 23 *Howard*, 66, decided that the grant did not extend above the Raccoon Forks.

But that decision did not determine anything else, and especially it did not cancel, nor purport to cancel, these certified lists. They remained outstanding, in possession of the State, as evidence of its rights and of the rights of its grantees, and with such effect as the law gives to them. Although they were not effectual to pass the title, still they constituted the "record of the action of the Government upon the title," and were "conclusive against the Government" until they should be cancelled. The effect of this record was to disable the Government from transferring the lands to other parties until after the certified lists—which were acts of transfer—had been duly cancelled.

How could they be cancelled? We submit that it could be done only in one way, and that is, by filing a bill in a Court of Equity, to have them *judicially* cancelled and set aside. No executive officer of the Government could by his own authority cancel those lists, any more than he could cancel patents, nor could he disregard them while they remain uncancelled.

In a case which came before this Court, in 2 *Wallace*, 525, *United States* vs. *Stone*, a former Secretary of the Interior attempted to cancel an official act of his predecessor, but this Court said "The Secretary of the Interior transcended his authority" in attempting so to do; and the Court added, "*One officer of the Department cannot annul the act of his predecessor; that is a judicial act, and requires the judgment of a Court.*"

And so in this case, while these certified lists remain outstanding and uncancelled, they are conclusive against the Government and its officers, and prevent them from dealing with the lands as a part of the public domain; and they can be cancelled *only* by a judicial proceeding instituted directly for that purpose.

2 *Wallace*, 525, *United States* vs. *Stone*.
4 *Wallace*, 236, *Hughes* vs. *United States*.

It is thus seen that even if Congress had not acted further in the matter, these certified lists would have been effectual to prevent the executive officers from disregarding the title which the lists purported to convey, until by a direct proceeding in the Courts, and upon due notice to the proper parties, those lists had been judicially cancelled and set aside.

But we have already also seen, that by the Joint Resolution of 2d March, 1861, and by the Act of 12th July, 1862, Congress confirmed the transfer of title made by these certified lists, and that this Court, in 5 *Wallace*, 681–9, decided that the title upon which the plaintiff relies in this suit was thereby made perfect.

III.—No title to said lands, either legal or equitable, remains in the United States, but the *entire title* has been transferred to and vested in the complainant.

(1.) The cases in 5 *Wallace*, 681–9, above cited, are conclusive to show that by the Joint Resolution of 2d March, 1861, and the Act of 12th July, 1862, the title of the complainant is made good.

(2.) The Joint Resolution above cited relinquished to the State of Iowa "*all the title* which the United States still retained" to the lands in question.

Now it is to be noted:

(*a.*) If the title of the United States, at that time, was an absolute title, then an absolute title was transferred to the State and its grantees.

(*b.*) If, however, any individual had, in any manner known to the laws, acquired any rights to pre-emption or homestead, or other entry in said lands—the Government merely holding the legal title in trust—then the title transferred by the Joint Resolution was the same which the Government held, and it was taken by the State and its grantees *cum onere*, and coupled with the trust, if any, which existed in favor of any parties having rights of pre-emption or homestead entry.

(*c.*) But in either case, "*all the title*" which the United States had, up to that time, retained, was, by the Joint Resolution, "relinquished to the State of Iowa." "*All the title*," not a part of it, not merely the title which was an absolute title, but "*all the title*," whether as absolute owners, or as trustees for individuals claiming pre-emption or homestead entries.

(*d.*) No injury is done to any rights of pre-emption or of homestead entry—if any such exist—by this construction of the law; for if any such rights existed, and could be enforced against the Government before the Joint Resolution, they could in like manner be equally enforced against the *State* and its grantees after the Resolution. In such case, if any parties really have an *equitable* title, they have a perfect remedy in the Courts, by proceeding against the grantees of the State who hold the legal title; and such a course would be infinitely more just than to oblige the State and its grantees to hunt up and prosecute every individual who may attempt to obtain the lands by pre-emption or homestead entry.

(.) The present Secretary of the Interior, Mr. Browning, has taken this view of the law, in administering the Act of Congress of March, 1867, "to quiet title to land in the town of Santa Clara and Petaluna, in the State of California," in an official opinion dated 23d March, 1867, where he holds as follows: "That grant operates *ex proprio vigore*, as a complete and absolute transfer of the title which the United States had at that date to the lands within such limits. The parties to whom you refer may have a valid equitable title to the tracts entered and paid for, which should be carried into patent, if the title and ownership of the Government had not passed under that Act. Such tracts are, however, not excepted from the grant, but the right of the parties claiming them is not prejudiced. The corporate authorities take the land *cum onere*, and coupled with the trust, if any, which devolved upon the Government. Their claims are subject to judicial examination and adjudication, and if found to be valid, may be enforced by proceedings against the authorities in whom the title of the Government is now vested." A copy of this decision of Mr. Secretary Browning is annexed, and marked A.

IV.—Consequently, the Government having "relinquished" all its title to said lands, the defendants, as officers of the Government, had no authority to continue to deal with them as if they were the property of the Government; and by pretending to grant pre-emptions and homestead entries therein, they are trespassing upon private rights, and clouding the title to the complainant's property, and manifestly depreciating its value, and rendering it unsaleable.

In the language of this Court, in 3 Wallace, 491, cited above, the certified lists, in connection with the Joint Resolution, constituted the "*record of the action of the Government*" upon the complainant's title. That record shows that the Government has no title remaining, and, "as against the Govrnment, this record, so long as it remains uncancelled, is conclusive." Is it not *conclusive* also upon all its officers?

In many cases of grants by Congress to States,—as where grants are made in aid of railroads, and their extent and locality depend upon the exact position of the road when completed—it becomes necessary for the land office to decide when the act has been done upon which the title vests, and then to issue the proper certificates, and in such cases the certificates may be essential links in the chain of title. But it is otherwise when the Act of Congress which makes the grant, accurately describes the granted lands, and by its own force vests the title at once in the grantee; and we say:

V.—The Acts of Congress of 8th Aug., 1846; 2d March, 1861; and 12th March, 1862, made *direct grants in fee* to Iowa, which vested a complete title in the State at the moment of their enactment. No action of the Land Department was necessary in order to complete the title, and the land officers had no authority to do anything whatever in relation to the granted lands, except to make the partition which was rendered necessary by the terms of the Act of 1846, which granted a "moiety" of an undivided tract. Under these Acts of Congress the State acquired a title, which was *good*, as against the Government, *from* 8 *Aug.* 1846.

(1.) By the Act of 8 Aug., 1846, there was "granted to the Territory of Iowa * * one equal moiety in alternate sections of the public lands, * * * in a strip five miles in width on each side of the Des Moines River, to be selected within said Territory by an agent or agents to be appointed by the Governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

And by Section 4 of the Act it was provided that whenever the Territory should be admitted as a State, the lands so granted "shall be and become the property of said State."

The lands granted were thus perfectly identified, and the Act made a direct grant in fee, and the title vested in the Territory the moment the bill became a law. The Territory was admitted into the Union as a State early in 1847—and the lands granted then became "the property of the State." The Certified Lists of the lands were not issued from the Land Office to the State, except as the surveys progressed and extended from 1848 to 1853—but the *title* to all the lands granted was fully *vested in the grantee* at the moment of the passage of the law. The United States and Iowa then became tenants in common in the land, "one equal moiety" of which had thus been granted.

The statute pointed out the mode of partition—Iowa was to make its selection of the alternate sections "subject to the approval of the Secretary of the Treasury." Iowa selected the odd sections, and the Secretary approved the selection; and in this way the partition was made.

Before this selection and approval *the title* of Iowa to the granted lands was as perfect and as completely vested as it was after the selection and approval; but it was a title to an undivided interest, which became separate and distinct when the partition was complete.

The Certified Lists issued from the Land Office, under this grant, were of no importance, except as a mode of making partition; and if they had never been issued the complete title vested in Iowa by the Act itself could not have been thereby impaired. But the certificates were evidence of the "approval" by the Secretary of the selection made by the State. The partition was thereby made complete, and the power of the Land Office in relation to the matter was thereby exhausted.

Such was the construction put upon this Act by this

Court in 23 *Howard*, 66: *Litchfield* vs. *Dubuque Co.*, where the Court said that the Act "made a direct grant in fee," which vested the title at once—and that "no authority was conferred upon the land officers to do more than to make partition in the manner prescribed in the Act."

In making the partition called for by the act the land officers issued to Iowa certificates for the alternate sections, as far as the surveys were completed, extending above the Raccoon Fork of the river, their action being based upon the decision made by the executive officers that the grant extended to the northern boundary of the state.

But in 23 Howard, 66, this Court decided that the grant did not extend above the Raccoon Fork. This made necessary a confirmatory act of Congress, which was the joint resolution of 2nd March, 1861.

(2.) By this joint Resolution "*all the title* which the United States still retain in the tracts of land along the Des Moines River, and above the mouth of the Raccoon Fork thereof, in the State of Iowa, which have been certified to said state improperly as part of the grant made by the Act of 8th August, 1846, and which is now held by *bona fide* purchasers thereof under the State of Iowa, be and the same is hereby relinquished to the State of Iowa."

The lands were here perfectly identified—they had been already listed and certified—and noted upon the records of the general and local land offices, and official certified lists had been furnished to the State. Upon the passage of this joint resolution *the title* to the lands therein specified became perfect in the state and its grantees. Nothing which the Land Department or any of its officers might do, or fail to do, could in the slightest degree affect the matter. No power was conferred upon them to do anything about it. The joint resolution of 1861—like the act of 1846—vested the title at once.

So also:

(3.) The Act of 12th July, 1862, "*extended the grant* made

by the Act of 8th August, 1846, so as to include *the alternate sections designated by odd numbers, lying within five miles of said river*, between the Raccoon Fork and the northern boundary of the State."

Here again the lands granted are perfectly identified : the Act made a " direct grant in fee," and the title vested in the grantee the moment the law took effect.

No power was given to the land officers to do anything about it—and anything which they might attempt to do, or fail to do, would not in any manner impair the title which the act itself completely vested in the grantee.

The Act of 1846 vested the title at once, as to all the lands which were below the Raccoon Forks ; and if the certificates issued under that Act for the lands above the Raccoon Forks had been properly issued—that is, if the law of 1846 had authorized them—they would have been evidence to Iowa of a good title *from 8th August*, 1846. The Joint Resolution of 2d March, 1861, confirmed these certificates, and thereby made them as effectual as if they had been authorized by the Act of 8th August, 1846 : consequently the title to the lands specified in the Joint Resolution was made good, not merely from the date of that resolution, but, by relation back, the title was made good from the 8th August, 1846, when the law was passed under which the certificates had been issued. The legal effect of the confirmation by the Joint Resolution of 1861 was to sanction the construction which the executive officers had given to the Act of 1846, and to legalize the transfer of title which they had attempted to make in carrying out that construction. Consequently the State of Iowa and its grantees took a good title to all the lands which were certified under that Act, whether the lands are above or below the Raccoon Fork, and that title is in every respect the same as if all said lands had been included, in terms, in the grant made by the Act of 1846. Such we understand to be the effect of the Joint Resolution of 1861.

But in addition to this is the Act of 1862; and we ask the attention of the Court to its precise terms. It is en-

titled " An An *confirming a land claim* in the State of Iowa, and for other purposes," and it enacts that " *the grant of lands* to the then Territory of Iowa," " *made by the Act of* 8*th August*, 1846, is *hereby extended so as to include* the alternate sections designated by odd numbers lying within five miles of said river, between the Raccoon Forks and the northern boundary of the State." The State of Iowa had always claimed that all of the lands here designated were included in the grant made by the Act of 1846; and by the action of the Land Department they had all been withheld from market since 1849, to satisfy that claim; and Congress, in 1861, had confirmed the titles *to that portion* of the lands above the Raccoon Forks, for which certificates had been issued, and which were then " held by *bona fide* purchasers under the State of Iowa." But this Act of 1862, as its title shows, was intended to " confirm " the claim made by the State to its full extent, and without any qualification. The Act does not purport to make a new grant, in addition to the former one, but simply enacts that " *the grant made by the Act of the* 8*th August*, 1846, * * * is hereby " *extended so as to include* " the lands which the State had always claimed under it."

The claim of the State was that the lands in question *had been granted* by the Act of 8 Aug., 1846; and this claim was *confirmed* in its fullest extent by the Act of 1862; and it is submitted that the legal effect of this confirmation was to make the title of the State to all the granted lands, whether above or below the Raccoon Fork, *good from* 8 *Aug.*, 1846; and that such title must be held good *from that date* " as against the government, and all parties claiming under it by title subsequent."

The grant to Iowa, made by Congress, in the acts aforesaid, *is* " *higher evidence of title* than a patent—as it was *the direct grant of the fee*, which had been in the United States *by the government itself;* whereas the patent was only the act of its ministerial officer."

2 *Howard*, 319 *Grignon's Lessee vs. Astor.*
Howard, 284 *Stoddard vs. Chambers.*

The effect of the confirmation of title made by an Act of Congress is clearly stated by this Court in the case of *United States vs. Arendondo*, 6 *Peters*, 691–713.

At page 713, the Court said, "Where Congress have, by confirming the report of Commissioners or other tribunals sanctioned the rules and principles on which they were founded, it is *a legislative affirmance of the construction* put by these tribunals on the laws conferring the authority, and prescribing the rules by which it should be exercised; or—which is to all intents and purposes of the same effect in law—It is a legislative ratification of an act done without previous authority, and *this subsequent recognition and adoption is of the same force as if done by pre-existing power*, and relates back to the act done."

This Court can thus see that the acts of Congress have fully transferred the entire title to these lands to the State of Iowa and its grantees—and that the United States have no remaining interest in them—and that the defendants have no authority to deal with them for any purpose, as public lands.

VI.—That the complainant and other parties similarly situated are *owners* of the lands *and bound to pay the taxes on them from the date of their conveyance by the State in* 1858, was judicially determined by the Supreme Court of Iowa, in 22 *Iowa Reports*, 151 *Stryker* vs. *Polk County*. That Court said, "The plaintiff held a deed from the State—the State claimed under the original grant—the lists being duly certified, he was a *bona fide purchaser*, and the title still retained by the United States was relinquished to the State for his use." Again, "The United States had already, in the manner contemplated by the Act, parted with its title—the State upon the faith of the title then acquired, had sold and conveyed—and the Joint Resolution of 2d March, 1861, was intended as a matter of justice and right to secure and quiet *bona fide* purchasers in their titles." Again, "Our opinion is, that holding the title as he did, the Joint Resolution of 1861, for the purpose of the present inquiry

made it as good from the time of the first conveyance by the State, as it was after such Congressional action."

So the Court adjudged that the owners are liable to pay taxes from 1858; and yet in 1869, *after eleven years' taxes are levied and paid*, these defendants unlawfully assume to deal with the lands as if they were still a part of the public domain.

What stronger illustration of the injustice of the proceedings complained of could we present to this Court?

Second Point.—The complainant being the owner of the lands in question, the defendants, under color of their offices, but without authority of law, being engaged in the commission of acts which tend directly to cloud his title, and to depreciate the value of his property, and to lead to a multiplicity of suits, it is the duty of a Court of Equity to interfere by injunction, and restrain the defendants from the continuance of these illegal acts until a trial can be had, and a decision obtained, in the suits which have been instituted, and are now pending in the Courts of law to determine these questions.

I.—The bill alleges, and the record admits, that the complainant can have no adequate redress in the Courts of law.

II.—This is a proper case for relief in equity.

In 3 *Howard*, 441, 463, *Carroll* v. *Safford*, this Court stated the cases in which relief might be given in a Court of Equity, as follows:

"This may be done on the ground to prevent a cloud from being cast on the complainant's title; or to remove such cloud; to prevent multiplicity of suits; or to prevent an injurious act by a public officer, for which the law might give no adequate redress."

It is also laid down: "Where the plaintiff's title is not controverted, it is considered as established that a Court of

Equity will always interpose to restrain irreparable mischief."

Eden on Injunctions, 140.
7 John. Chy. Rep., 322.

"Chancery has undoubted jurisdiction to interfere by injunction where public officers are proceeding illegally and improperly, under claim of right; or where the exercise of such a jurisdiction is necessary to prevent a multiplicity of suits at law."

2 *Johns. Chy.*, 463, *Belknap* v. *Belknap.*
6 *Johns. Chy.*, 449, *Livingston* v. *Livingston.*
6 *Paige*, 262, 264, *Oakley* v. *Trustees, &c.*

12 *Wheaton*, 193, *Mallow* v. *Hinde.* In this case the Court said:

"The Court may, in its discretion, where the purposes of justice require it, retain jurisdiction of an injunction bill, as between the parties regularly before it, until the plaintiffs have had an opportunity of litigating their controversy with the other parties in a competent tribunal; and if it finally appear by the judgment of such tribunal that the plaintiffs are equitably entitled to the interest claimed by the other parties, may proceed to a final decree upon the merits."

And at page 199: "Such a proceeding would seem to be justified by the urgent necessity of the case, in order to prevent a failure of justice."

We submit that the foregoing remarks of the Court are peculiarly applicable in this case.

In 14 New York, 541, Heywood *v.* City of Buffalo, the Court of Appeals states the general rule as follows:

"Equity will interfere by injunction—

(1.) Where the proceedings in the subordinate tribunal will necessarily lead to a multiplicity of suits.

(2.) Where they lead in their execution to irreparable injury to the freehold.

(3.) Where the claim of the adverse party to the land is valid, upon the face of the instrument or proceedings sought to be set aside, and extrinsic facts are necessary to be proved in order to establish the invalidity or illegality.

The present case comes clearly within the rules thus laid down, for,

(1.) The proceedings which the complainant seeks to restrain, in this case, "will necessarily lead to a multiplicity of suits," for by those proceedings of the defendants, papers affording color of title are to be placed in the hands of multitudes of persons, thus rendering it necessary for the complainant to bring suits against each holder of such papers, while by this suit against the defendants the question of their right to issue such papers may be determined in *one* suit.

(2.) The proceedings complained of cloud the plaintiff's title, and place in numerous hands color of title under which irresponsible parties enter upon complainant's lands, and cut and carry away, and destroy the timber, thus doing irreparable injury. And,

(3.) The certificates of pre-emption, or of homestead entry, which we seek to restrain the defendants from issuing, are, perhaps, "valid upon their face," and "extrinsic facts are necessary to be proved in order to establish their invalidity or illegality."

(*a.*) The Government may allow its lands to be taken up by pre-emption, or by homestead entry, and as the Government is the original proprietor of all the lands in the new States, certificates purporting to allow such entries, and signed by the defendants as Register and Receiver, and without anything thereon appearing to show their invalidity, would, *prima facie*, seem to be "valid upon their face." And,

(*b.*) "Extrinsic facts would be necessary to be proved in order to establish their invalidity or illegality,"—that is to say, it would be necessary to show, either—

That the lands had been previously sold or disposed of by the Government and were really private property, and that *therefore*, the Government had no right to grant pre-emptions or homestead entries in them; or

That the lands had been duly "reserved," and that, *therefore*, no pre-emption or homestead entries could attach to them.

We think it is clear, therefore, that the case made in this action is a proper one for relief in a Court of Equity.

We do not enlarge upon this view, for we do not understand the general proposition to be denied.

But the Court below held, that in this particular case the complainant was not entitled to an injunction, for two reasons; that is to say—

Proper parties defendants were not before the Court; that the bill sought to foreclose the rights of the persons claiming pre-emptions and homestead entries, and that, therefore, *they* were necessary and indispensable parties to this suit; and

The defendants are executive officers of the Government, and, *therefore*, an injunction cannot be granted against them.

In reply to these views, the complainant says—

Third Point.—The persons claiming, or who may claim the right of pre-emption or homestead entries in the lands are not necessary parties to this suit.

I. The question whether any persons not made defendants have such an interest to to make them necessary parties, must be determined by the Court, *from the facts appearing in the case.*

(1.) In this case it *is admitted on the record* that the complainant is the owner of the lands in fee simple; that neither the Government, nor any officer of the Government, has any authority to grant pre-emption or homestead entries therein; that all attempts to do so are contrary to law and in direct violation of the Acts of Congress relating to those subjects, &c. That "none of said lands are subject to pre-emption or homestead entries." That all of said lands have been for many years, and are now withdrawn from sale, and reserved, "and are not, and have not heretofore been subject to entry or sale, or settlement or pre-emption;" and that "to said lands no pre emption rights have attached, or could attach by settlement or otherwise."

These are the facts, as admitted on the record: What "interest" in these lands can the Court see in parties who may claim to pre empt them? If this is private property—and if the defendants are engaged in clouding the title, and inciting other persons to trespass on them—why need their co-trespassers be made parties to a suit brought to restrain the defendants alone from their illegal acts?

The facts appearing and admitted on the record make it *impossible* that any other parties have an interest in the lands which render them necessary parties in this suit. As they have no possible interest in the lands they cannot be affected by the decree.

(2.) The Court cannot *presume*, without proof, and in contradiction of the record, that some possible interest may exist in third persons, for the sole purpose of turning the complainant out of Court, and dismissing the bill for want of proper parties.

(3.) *This is private property* held by the complainant in his own right, by an absolute fee simple title, in which the Government has no interest, and with which its officers have no right to meddle, and the lands "*are not, and have not heretofore been subject to entry, or sale, or*

settlement, or pre-emption;" and to said lands "*no pre-emption rights have attached, or could attach.*"

Such are the allegations in the bill—and they are admitted before the Court.

How then can it be pretended that it is necessary to make any persons parties except the defendants, of whom the bill complains and whom it seeks to restrain?

The bill alleges, that the title to the lands is in the complainant—that the Government has parted with all its title—and yet, that the defendants, under pretence of being government officers, are pretending to dispose of these lands as if they still formed part of the public domain; and it seeks to enjoin them from so doing.

II. The question is really, whether the title is in the Government, or not If it is, the defendants have authority for what they are doing; if the title is not in the United States, but in the complainant, the defendants are acting without authority.

This question may be fully settled between the complainant and the defendants, without in any manner affecting the rights of others.

(1.) It is the ordinary case of a claimant to land who insists that he has the better title, *as against the Government.* It is a contest with the Government. It is like a claim for pre-emption before the Land Office, or a claim to land under homestead entry, or by purchase. In all these cases the claimant insists that he has the better title in equity, and that the Government should convey to him by patent. The Land Office hears and decides—sometimes against the Government and in favor of the claimant, and then a patent issues; sometimes it decides in favor of the Government, and against the claimant, and refuses a patent; but it is never considered necessary to make other claimants parties to the proceedings before the Land Office. The question is merely decided as between the claimant and the Government; and the decisions made in such cases, and patents issued or

withheld in pursuance of them, are conclusive only as to the rights between the claimant and the Government, and decide nothing as to the rights of any other party.

(2.) This is shown by the numerous cases reported in the books, where the Court afterwards examines into the proceedings, and decrees, as is frequently done, that the title really belongs to some third party, and not to either the claimant or the Government, between whom the litigation occurred before the Land Office.

(3.) A final decree in this case, as between the parties before the Court, would only decide as to whether the complainant or the Government holds the *legal title* to the land; and could not, in any way whatever, foreclose the rights of any persons claiming to have an *equitable* title.

III. It is a mistake to suppose that any person claiming pre-emption, or homestead entry in these lands, could be prejudiced by this suit—or by a decree therein as between the parties on the record—for—

(1. The assumption that they may have an interest which *could* be prejudiced, is on the ground that they hold only the *equitable* title; conseqnently—

(2.) The *legal* title is in the United States—or in the complainant: *And*

(3.) If other parties have the eqnitable title they can enforce it against the holders of the legal title.

(*a.*) Against the Government if it holds the legal title—by application and proceedings before the Land Office—And

(*b.*) Against the complainant, if he holds the legal title—by suit in the Courts.

Of what moment is it to any party claiming pre-emption whether the *legal title* is in one party or another: In the United States, or in Iowa and its grantees? In

either case, if the right to pre-empt is denied, it can be only established by a suit.

No decree which would be made in this case between the complainant and the defendants would deprive other parties of the right of establishing their better title, if they have one in the Courts.—Besides

It is to be assumed, that, in any degree which might be made, the rights of any parties not before the Court *could* be, and if necessary, *would* be, saved by the decree: and,

(4.) It is admitted on the record that these lands were "Reserved," and that "no pre-emption or homestead rights had attached, or could attach thereto." Besides—in 5 Wallace, 681, in Wolcott *vs.* Des Moines Co., this Court decided that all these lands were "Reserved" and while so Reserved they are not subject to pre-emption or homestead settlement. (Pre-emption Acts of Congress of 20th May, 1830; 14th July, 1832; 22d June, 1838, and 4th Sept., 1841.) And so this Court has often decided: 12 Wheaton, 586, Chotard *vs.* Pope; 13 Peters, 498, Wilcox *vs.* Jackson; 18 Howard, 18, Kissell *vs.* St. Louis School; 18 Howard, 87, Minton *vs.* Cromellin.

In the face of these admissions that the lands are "Reserved," and that no "pre-emption, or homestead rights have attached, or *could* attach" to them, the Court cannot *presume* such rights to be outstanding.

(5.) In the Court below, it was argued that the object of the bill was to prevent the assertion of claims to the lands by parties who have inchoate pre-emption or homestead rights, and that the injunction asked for would effectually prevent their taking the steps necessary to perfect their claims, so as to enable them to assert them in a Court of Justice: In short, that by an injunction against the defendants, who have no personal interest in the lands, the bill seeks to destroy, or effectually prevent the assertion of the rights of other parties, not brought before the Court.

This argument is unfounded, for—

(*a.*) It *assumes* that there are outstanding inchoate rights of pre-emption or homestead entry, whereas the bill alleges, and the record shows, that there are *not* and *cannot* be any such rights.

(*b.*) If such rights do exist they are *equitable* rights, and as we have already seen, could be enforced against the holder of the legal title.

(*c.*) If such equitable rights exist, it is not necessary (in order to be able to assert them in the Courts) that parties claiming them should be permitted to file any papers, or to take any other proceedings before the defendants as Register and Receiver. If such rights exist the Courts will protect them, although the Register and Receiver and all the departments of the Land Office reject them. So held in

2 *Black*, 552, *Lindsay* vs. *Hawes.*
14 *Howard*, 377, *Cunningham* vs. *Ashley.*
20 *Howard*, 8, *Garland* vs. *Wynn.*

In 14 How., 377, the right of the party claiming pre-emption was *rejected* by the Register and Receiver, who refused to permit him to take any steps to perfect his legal title; and the action of the Register and Receiver was affirmed by the Commissioner of the Land Office, Secretary of the Treasury, and Attorney-General, and the claimant never paid any money, nor received any certificate; yet this Court held that he had the best title to the land, and decreed it to him, although for twenty years all the land officers had decided against his right.

(*d.*) The foregoing cases show that if the defendants in this suit are restrained from granting certificates of pre-emption and homestead entry, such action will not in any manner whatever prevent any parties who really may have rights to make pre-emptions or homestead entries, from asserting and maintaining them in the Courts.

The Court can therefore see that it is impossible that such claimants had any such interests as to make them nececessary parties.

IV. As between the complainant and the defendants—the parties litigant—the case may be completely decided.

As between these parties, the only question is, whether the title is in the complainant or in the government; and it is obvious that *this* question may be determined without bringing in any other parties.

The rule adopted in this Court is, that where the case may be completely decided *as between the parties litigant*, the circumstance that an interest exists in some other party, ought not to prevent a decree upon its merits.

10 *Wheaton*, 168, *Elmendorf* vs. *Taylor:* In this case it was said, "If the case may be completely decided, *as between the parties litigant*, the circumstance that an interest exists in some other party ought not to prevent a decree upon its merits."

This language was cited and approved in 17 *Howard*, 130, *Shields* vs. *Barrows*.

In 3 *Wheaton*, 591, *Cameron* vs. *McRoberts*, it was said: "If a distinct interest vested in Cameron, so that substantial justice (so far as he was concerned) could be done, without affecting the other defendants, jurisdiction of the Court might be exercised as to him alone."

In 12 *Wheaton*, 198–9, *Mallow* v. *Hinde*, "It was held that where an equity cause may be finally decided, *as between the parties litigant*, without bringing others before the Court, who would, generally speaking, be necessary parties, such parties may be dispensed with in the Circuit Court."

So also it was said in 7 *Peters*, 263, *Vattier* vs. *Hinde*, "It is the settled practice of the Courts of the United States, if the case can be decided on its merits between those who are regularly before it, to decree as to them."

See also 8 *Wheaton*, 421, *Wormley* vs. *Wormley*.

As between the complainant and the defendants, this suit can be decided on its merits; and therefore within these authorities there is no necessity for other parties being brought in.

V. In the cases where this Court has held that other parties were necessary, the rights of the absent parties were so connected with the rights of the parties before the Court, that it was impossible to separate them; or to make a decree as to those before the Court which would not affect the parties not before the Court.

In 12 *Wheaton*, 198, *Mallow* v. *Hinde*, the Court said, "The complainants have no rights separable from, and independent of, the rights of persons not made parties. The rights of those not before the Court lie at the very foundation of the claim of right by the plaintiffs, and a final decision cannot be made between the parties litigant, without directly affecting and prejudicing the rights of others not made parties."

17 *Howard*, 139, *Shields* v. *Barrows*. This was a bill to rescind an agreement made with *six* individuals, only *two* of whom were brought before the Court. The Court said at page 139:

"The contract of compromise was one entire subject, and from its nature could not be rescinded so far as respected *two* of the parties, and allowed to stand as to the others." * * * "Each was an indispensable party to the bill for a rescission of the contract."

15 *Howard*, 233, *Northern Ind. Road* vs. *Mich. Cent. R. R.* This case could not be decided without passing upon the charter of the New Albany and Salem R. R. Co.—which was not a party to the suit—and the Court held that it was a necessary party.

6 *Wallace*, 250, *Barney* vs. *Baltimore City*. This was a bill for the partition of real estate, and the Court held it to be impossible to make a decree which would not affect the interest of the absent parties—and held, therefore, that they were necessary parties.

3 *Wheaton*, 501, *Cameron* vs. *McRoberts*. This was a case where a *joint interest* existed between several parties, only one of whom was before the Court.

In 10 *Wheaton*, 166–8, *Elmendorf* vs. *Taylor*. The bill was dismissed on the ground that the complainant was a *tenant in common* with others, and should have made his co-tenants parties.

It will be noted as follows:

(1.) The cases in 3 Wheaton, 591, 6 Wallace, 280, 15 Howard, 233, 17 Howard, 139, 12 Wheaton, 198, and 10 Wheaton, 168—all held, for the reasons stated in each, that other parties were necessary in those particular cases.

Yet,

(2.) In 3 Wheaton, 591, 10 Wheaton, 168, 12 Wheaton, 198, 7 Peters, 263, and 17 Howard, 139, the rule was stated to be that, "if the case can be completely decided *as between the parties litigant*, the circumstance that an interest exists in some other person * * ought not to prevent a decree upon its merits."

These cases do not show that the persons who may claim pre-emptions or homestead rights, are necessary parties to this suit; but on the contrary, they establish that such persons are *not* necessary parties to this suit; as the suit may be fully decided as between the parties litigant, without bringing in other parties.

VI. It is claimed that the persons who are *about* to apply for pre-emption or homestead rights, are indispensable parties to this suit.

It is *impossible* for us to know who may *hereafter* propose to pre-empt our lands. Against those who have *already* made the attempt we have commenced suits; and we ask an injunction to prevent further issues of pre-emption and homestead papers to any and every future applicant, until the suits which have been commenced can be tried. The illegal act complained of is being done by the defendants,

and *they* threaten to continue it, and it is of them, and them only, that we complain. It is confessedly impossible for us to state who may *hereafter* attempt to pre-empt the lands, or to make them parties. Is our bill, therefore to fail? Will a Court of Equity refuse to do justice between the parties regularly before it, merely because the complainant omits to do what it is *impossible* to do? Courts of Equity will not act from any such narrow view, and permit mere rules of practice established for their convenience, and not involving substantial rights of parties, to subvert the great end of their existence. When necessary, in order to do justice, these rules are made to give way.

In 9 *Wheaton*, 738, the Court held, that if it was *not in the power of the plaintiff* to bring in as parties all who were really interested, their presence would be dispensed with. And in 10 *Wheaton*, 168, Ch. J. Marshall said, "It would be a misapplication of the rule to dismiss the plaintiff's bill because he had not done that which the law will not enable him to do." Why then, in this case, should the complainant's bill be dismissed because he does not do *what it is not possible to do?*

VII.—Parties who may be intending (if any such there are) to apply for homestead or pre-emption entries upon these lands, are not injured by continuing this injunction, but are benefited by it.

The record admits, and this Court has decided, as we have already seen, that these lands are private property, and not a part of the public domain.

If the local land officers are permitted to continue to treat them as public lands, and thus induce immigrants and settlers to occupy and improve them, they are leading these unsuspecting persons to waste their labor and means in establishing homes, of which the law, as settled by this Court, must, sooner or later, deprive them. No subordinate executive officer should be permitted thus to trifle with the laboring masses, whom the Government is inviting to occupy its unappropriated lands. Even

if the title were *doubtful* (which we cannot admit), innocent parties should not be encouraged by government officials to attempt to acquire lands with *doubtful* or *litigated* titles. The mere fact that the title was disputed should be a sufficient reason for any public officer to withhold them from sale, or private entry, until the dispute could be judicially determined. Such was the view expressed by this Court in 5 *Wallace*, 681, where it was said that the doubt as to the extent of the grant "made it *the duty* of the land officers to withhold the sales, and reserve them to the United States until it was ultimately disposed of."

If the local land officers forget, or disregard this plain duty, will not a Court of Equity compel them to observe it?

Fourth Point.—The mere fact that the defendants are executive officers of the United States, and are doing the acts complained of under the color of their offices, does not deprive the Court of jurisdiction.

The decision in the Court below proceeded upon the theory that the defendants were engaged *in the proper discharge of the duties confided to them by law;* and that this suit was an attempt to control them in the exercise of their judicial discretion *in regard to a matter in relation to which it was their duty to act.*

This *theory* is in fact begging the question; it is taking for granted the very matter in dispute.

By *assuming* that the defendants were engaged *in their proper duties* as Register and Receiver, it becomes easy to show that the Courts will not interfere with them, and control their executive discretion *while in the discharge* of duties imposed upon them by law.

The complainant does not contend for any such proposition.

On the contrary it is admitted that this Court will not interfere by injunction with the proper exercise of their judicial discretion by executive officers, while engaged in the discharge of the duties imposed upon them by law.

But in this case, the very foundation of the complaint is that the defendants, in the acts complained of, are *not* in the discharge of any duties imposed upon them by law ; that they are not attempting to deal with public lands, but *with private property:* that they have no authority whatever to grant pre-emption, or homestead entries therein, but are acting in open and palpable violation of the acts of Congress, defining their duties as Register and Receiver: and "that they well know that the lands are not subject to pre emption, or homestead entries, but belong to the complainant."

In short the bill alleges, and the record admits, that, in the acts complained of, the defendants are wilfully and knowingly attempting to cloud the title of complaint's property, and are inciting trespasses thereon; that they are acting without authority, and against the law, and not in the proper discharge of their duties as Register and Receiver.

These are the admissions on the record. How then can the Court *assume*, that, because they *pretend* to be public officers, they are to be regarded as in the proper exercise of their judicial discretion, and therefore, to be above the Court, while thus palpably infringing upon private rights.

The complainant submits:

I. The doctrine that the Courts will not interfere to control the discretion of executive officers while engaged in the discharge of their official duties, has no application to this case.

The doctrine is founded upon the idea that by the constitution and laws, there are certain political and executive duties imposed upon the President, for the proper discharge of which, according to his best judgment, he is responsible to

the country—that to aid him in discharging these duties, the executive departments and subordinate officers are established and appointed, and, that, in contemplation of law, the official acts of the executive departments, and subordinate officers *while acting within their conceded authority*, are the acts of the President, and that, *therefore*, the Courts will not interfere to control their executive discretion.

But, whenever executive officers *go beyond the law*, and *commit an illegal act, under color of their offices*, to the injury of an individual, they cease to be protected by their official character, and are responsible in the Courts, and in the ordinary modes of proceeding.

1 *Cranch*, 137, *Marbury* vs. *Madison*. In this case the distinction is clearly shown between the cases where the Courts will not entertain jurisdiction, and the cases where they will entertain jurisdiction.

(1.) In questions which are political or executive—where the officer acting has a right to act on the subject, and is vested with discretion, and supposed to be obeying the order of the President (who has a right to give orders *in that case*) Courts will not entertain jurisdiction, nor attempt to control the discretion of the officers. But,

(2.) If a citizen has a vested right in the subject matter—and an officer, under color of his office, commits an illegal act by which the individual sustains injury, the Court will entertain jurisdiction.

These were the doctrines enunciated in the celebrated case of *Marbury* vs. *Madison*; and we know of no other subsequent case in which this Court has announced any different doctrine.

At page 166 of 1 *Cranch*, the Court say: "where a specific duty is assigned (to the head of a department) by law, and *individual rights* depend upon the performance of that duty, the individual who considers himself injured has a right to resort to the laws of his country for a remedy."

At page 167, "The question whether a right has vested or not, is in its nature judicial, and must be tried by the judicial authority."

At page 170, "If one of the heads of department commits any illegal act, under color of his office, by which an individual sustains an injury, *it cannot be pretended that his office exempts him from being sued in the ordinary mode of proceeding*, and being compelled to obey the judgment of the law." "How, then, can his office *exempt him from this particular mode* of deciding on the legality of his conduct, if the case be such a case as would, were any other individual the party complained of, authorize the process?"

We submit that *the mode* in which the Courts will interfere—whether by mandamus or by injunction, or by ejectment or other proper legal remedy, must be determined by each particular case; and that when a proper case arises for the interference of the Courts they will hold the defendants responsible "*in the ordinary modes of proceeding*," which would be applicable as against defendants, who are not executive officers.

In 12 *Peters*, 612, *Kendall* v. *United States*. The Court held that that was not a case involving the exercise of executive discretion, and granted the appropriate remedy, which was mandamus.

If in that case, injunction had been the appropriate remedy, would not the Court have granted it?

In 13 *Peters*, 498, *Wilcox* v. *Jackson*, the Court entertained jurisdiction in an action brought against an executive officer, and decided the questions involved. It was an *ejectment* suit; but would not the Court have equally entertained jurisdiction, and decided the same questions if they had properly been presented in an *injunction* suit?

4 *Wallace*, 498, *Mississippi* v. *Johnson*. In this case the Court held that the bill was an attempt to control the exercise of the executive discretion, and therefore refused to entertain the suit. And so in

6 *Wallace*, 50, *Georgia* v. *Stanton*. The Court denied the application for an injunction upon the ground that it called for a judgment upon a political question.

But the Court clearly intimated that if it had been a case involving *private rights of person or property*, it would have entertained jurisdiction.

At page 76 the Court said, "The rights in danger (to authorize the Court to grant the injunction) must be rights of person or property—not merely political rights, which do not belong to the jurisdiction of a Court, either in law or equity."

At page 77: "No case of private rights, or *private property infringed, or in danger of actual or threatened infringement*, is presented by the bill in a judicial form, for the judgment of the Court."

It is, then, seen that, in 1 *Cranch* and 6 *Wallace*, the Court has announced that where private rights are involved, it will take jurisdiction.

In the case under consideration, where the whole record shows an admitted and continuous illegal act of the defendants, infringing, and threatening to continue to infringe, upon private rights of property, is the complainant to be without a remedy *merely* because the defendants are officers of one of the executive departments?

II.—Whenever it is held that a defendant is exempt from judicial interference as an executive officer, it is because the act complained of is a political or executive act, done by the officer, in the proper discharge of the duty confided to him by law, and in the exercise of the discretion lawfully belonging to the office; in short, *it is because the officer has jurisdiction*, which he is exercising in a lawful manner.

If the officer is acting in the discharge of a duty devolved upon him by law, and in the exercise of discretion which the law annexes to the office, then he is protected from judicial interference—but otherwise not.

Consequently, the Court must always examine and decide whether, in the act complained of, the officer is acting within the authority conferred upon him by law, or outside of and beyond the law.

This is a question of jurisdiction. The officer is acting as a Court. If he has jurisdiction he is protected: "If he acts without jurisdiction, his act is a nullity, and he is a trespasser;" and "the fact that he is a judicial officer is no justification." So said this Court in 1 Peters, 328, 340; and the Court added, "This distinction runs through all the cases on the subject; and it proves that the jurisdiction of every Court exercising authority over a subject may be inquired into in any Court where the proceedings of the former are relied on," &c.

This general doctrine, in its application to executive officers, was well stated by Mr. Justice M'Lean in 17 Howard, 313, 314, *U. States* v. *Guthrie*, as follows:

"It is admitted that, by mandamus, no act of an executive officer can be examined which invades the exercise of his judgment or discretion. * * But if the act be without authority, and against law, it is void * * and *the act being void it cannot be considered as the exercise of an executive discretion.* The judgment and discretion which may not be interfered with by mandamus, must be in the discharge of executive duties. These do not come within the judicial power. *But an unlawful*, and consequently *void act* * * by which an injury is done to an individual, CANNOT BE COVERED BY EXECUTIVE DISCRETION."

The same principle was enunciated by this Court in the recent case of *Ex parte Bradley*, 7 *Wallace*, 364, where Mr. Justice Nelson said: "The ground of our decision * * is that the Court below had no jurisdiction. * * *No amount of judicial discretion of a Court can supply a defect or want of jurisdiction in the case*," p. 377.

In the case of Ex parte Bradley, just quoted, the Court looked into the proceedings before the inferior Court, to see if it had jurisdiction, and finding that it had not, it granted the mandamus which was applied for.

If in that case an injunction had been the appropriate writ, an injunction would have been granted—for the principle which

governs the Court is the same, whether the writ applied for be mandamus or injunction. This was distinctly stated by this Court in the case of *Gaines vs. Thompson*, 7 Wallace, 347—where the Court said: "The doctrine therefore, is as applicable to the writ of injunction, as it is to the writ of mandamus. * * * There can be no difference * * whether it be by writ of mandamus or injunction."

And in every case where the Court has passed upon this class of questions, it has first decided whether the officer was acting in a matter confided to him by law; if so, whether the law clothed him with discretion in the matter which he was exercising in the act complained of. If *both* these conditions existed, the Courts declined to interfere, but not otherwise.

In *Marbury* vs. *Madison*, 1 *Cranch*, 137, the Court held that the act in question was not one involving discretion, and that an individual had vested rights in the subject; but the Court declined to act, as it had not any constitutional power to act in that case.

In 6 *Wheaton*, 598 *McCluny* vs. *Silliman:* This was a case of application for mandamus to a Register of the United States Land Office. The Court said:

"The question in this case is as to the power of the State Courts over an officer of the General Government employed in disposing of *its* land, under the laws passed for that purpose. * * No one has ever contested the supreme right of the United States to dispose of *its own property* in its own way. * * And when we find it withholding from its own courts the exercise of this controlling power over its ministerial officers *employed in the appropriation of its own lands*," &c.

Here is a denial of the power of the Courts to control the officers of the Land Department employed in disposing of *the public domain*, for that is a matter over which Congress has conferred jurisdiction upon the Land Office; but not a word is said from which we are to infer that they are to be permitted to do as they please with *private property*.

The Court decided that the officers were discharging their duty—in a matter committed to them by law—and *that* was the reason why the Courts refused to interfere, and not merely *because* they were executive officers.

In 12 *Peters*, 524, *Kendall* vs. *United States:* The defendant was not only an Executive officer, but an officer of high grade, and head of a department.

If the ground taken by the defendants in the case under consideration is well founded, then this Court should have refused to entertain jurisdiction because Mr. Kendall was Postmaster-General, and without any other reason, saying, as is urged here, that in the administration of his office he was responsible only to his official superior, the President. That argument was urged in that case, but the Court met it by saying :

"It was argued at the bar that the Postmaster-General was alone subject to the control and direction of the President of the United States, with respect to the execution of the duty imposed on him by law. * * * *This is a doctrine that cannot receive the sanction of this Court.* It would be vesting in the President a *dispensing* power &c. * * * To contend that the obligation imposed on the President to see the laws faithfully executed implies a power to forbid their execution, is a novel construction of the Constitution, and entirely inadmissible," &c.

The Court, therefore, proceeded to inquire whether the law of Congress in question vested the Postmaster-General with any power and discretion in the matter. Finding that it did not, the Court dealt with him as it would with any other individual, and granted the Mandamus. The reason given was that "there was no room for the exercise of any discretion, official or otherwise." In other words, the Postmaster-General had no jurisdiction in that case. The decision was based, *not* upon the fact of his being an Executive officer, but upon the fact that the law did not confer upon him any discretion *in that particular case*, although it was undeniable that in the discharge of his proper duties as

Postmaster General the law did clothe him with discretion; in other words, he was attempting to act outside of the law, and without its authority, and *therefore*, was not protected.

In 14 *Peters*, 497, *Decatur* v. *Paulding*, the Court said:

"The first question to be considered is whether the duty imposed upon the Secretary of the Navy by the resolution in favor of Mrs. Decatur was a mere ministerial act."

This question the Court considered—and decided that the action of the Secretary involved the exercise of judgment and discretion. In other words, the Secretary had jurisdiction in that case, and *therefore* the consequence followed, and the Court refused to interfere. It was there said, "The Court could not revise the judgment of one of the Secretaries in *any case where* THE LAW *authorized him to exercise judgment or discretion.* Nor can it, by mandamus, act directly upon the officer, and guide and control his judgment and discretion *in the matters committed to his care in the ordinary exercise of his official duties.*"

In all these cases, it will be observed that the Court has first decided whether the officer had a lawful right to act at all in the matters complained of; and, if so, whether the law conferred any *discretion* upon him. If so, the officer had jurisdiction and the Courts declined to interfere; but not otherwise.

And so in

4 *Wallace*, 475, the Court refused the injunction upon "the general principles which forbid judicial interference *with the exercise of executive discretion;*" and in 6 *Wallace*, 50 the Court refused to pass upon a mere political question.

This brings us to the case of *Gaines* v. *Thompson & Wilson*, 7 *Wallace*, 347.

In that case the defendants set up by plea that the matters complained of "were within the exclusive control of the Executive Department," and it is quite evident that they were, as *the title* to the land in question was in the United States; and the

Court held that the case was one where the Executive officers were called upon to exercise judgment and discretion. The Court said: "The validity of plaintiff's entry, which is involved in their decision, is a question which requires the careful consideration and construction of more than one Act of Congress. It has been for a long time before the Department, and has received the attention of successive Secretaries of the Interior, and has been found so difficult as to justify those officers in requiring the opinion of the Attorney General." The simple fact that in that case the *title to the land was still vested in the Goernment*, seems conclusive to show that the Executive officers charged with the administration of *the public domain* should exercise their judgment and discretion in relation to conveying it.

In that case the Court made an elaborate examination of the former decisions relating to this subject; and deduced the "general doctrine that an officer to whom public duties are confided by law, is not subject to the control of the Courts in the exercise of the judgment and discretion which the law reposes in him as a part of his official functions. Certain powers and duties are confided to those officers, and to them alone, and however the Court may, in ascertaining the rights of parties in suits properly before them, pass upon the legality of their acts, *after the matter has once passed beyond their control*, there exists no power in the Court by any of its processes, to act upon the officer so as to interfere with the exercise of that judgment *while the matter is properly before him for action.* The reason for this is, that *the law* reposes this discretion in him *for that occasion.*"

The principle thus enunciated by the Court is in accord with every case from 1 Cranch to the present time.

"An officer to whom public duties are confided by law is not subject to the control of the Court, in *the exercise of the judgment and discretion* which the LAW reposes in him *as a part of his official functions*" * * "Courts will not interfere with the exercise of that judgment, *while the matter is properly before him for action.*"

It is to be noted that the judgment and discretion spoken of are those—

(*a.*) "Which *the law* reposes in him, *as a part of his official functions.*"

And the Court "will not interfere with the exercise of THAT judgment and discretion"—

(*b.*) "While the matter is PROPERLY before him for his action."

This language of the Court gives no countenance to the idea advanced upon the other side—that a defendant is to be free from interference by the Courts *merely* because he is an executive officer, but only in cases where the Courts can see that the act complained of is done by him in "the exercise of the judgment and discretion which THE LAW reposes in him *as a part of his official functions*," and "in a matter PROPERLY before him for his action"

This shows clearly the difference between all the foregoing cases where the Courts have refused to interfere, and the case now under consideration.

In all those cases the acts of the executive officers which were called in question related, in some form or other, to their administration of *public* affairs, and where the Court saw and decided that the officer had jurisdiction which he was lawfully exercising; while this is a case where the acts complained of relate solely to *private property*, and where the defendants, as public officers, have no right to meddle.

In 6 Wheaton, 598, the question was as to the conveyance of a part of the *public domain*—the title to which was then in the Government,, and where the jurisdiciction of the Land Officers was undoubted.

In 14 Peters, 497, as also in 17 Howard, 284, it related to the disposal of a portion of the *public* moneys, which were then in charge of the executive officers, who had jurisdiction in those cases.

In 4 Wallace, 375, and 6 Wallace, 50, the questions were political and executive, involving no question of private rights

of property; and in the case of *Gaines* vs. *Thompson & Wilson*, 7 *Wallace*, 347, the question was as to *public* lands, the title to which was still in the Government, and over which the defendants in that case had the legal supervision.

But in 12 Peters, 524, the Court granted relief, because *private rights* were involved; and the Court said that in that case "there was *no room for the exercise of discretion, official or otherwise.*" *Why* was there no room for the exercise of discretion? *Because Congress itself had acted*, and had *settled the rights of the parties in that case.* No room was left for the executive officers to judge—no discretion had been reposed in them. Congress had considered the case, and had decided upon the rights of the parties, and it remained only for the executive officers to execute. And that is the exact position of the case under consideration. Congress has, by the Act of 8th August, 1846, made "a direct grant in fee to Iowa," which vested the title at once, as this Court declared in 23 How., 66; and by the certificates issued under that Act, and by the confirmatory Acts of 1861 and 1862, the title of the State, and its grantees, including the complainant, was made complete, as this Court decided in 5 Wallace, 681. Congress has thus *vested the title in the State and its grantees.* And in 23 Howard, 66, this Court declared that by law "no authority had been conferred upon the Land Officers to do more than make partition between the tenants in common—Iowa and the United States—in the manner prescribed in the Act of Congress." This partition was completed in 1851–1853, when the selections made by the State were approved and certified by the Secretary in charge of the public lands; and thenceforth "there was no room for the defendants to exercise any discretion, official or otherwise," about the lands, for they had become *private property.*

This Court has thus itself determined that all authority of the land officers over these lands terminated in 1851–1853, and it necessarily follows that in the acts complained of in this suit they are acting without jurisdiction. They seek to excuse themselves by claiming that they are exercising their executive discretion; but we may be permitted to repeat, "no amount of discretion," executive or judicial "can supply a defect, or want of jurisdiction in the case."

If we concede that the land officers may exercise their judgment and discretion in relation to lands which are a part of the public domain, the question arises, when does their right to the exercise of such judgment and discretion terminate?

It must be conceded that the land officers do not retain the right *forever* to deal with lands as public property, merely because they have once been a part of the public domain; for if they do, they may sell by pre-emption the lands on which the cities of Cincinnati and Chicago are built, and the sites on which all the State houses of the Western States are erected, and the Courts could not interfere to prevent it. If the officers may exercise their discretion as they may understand their duty, and not as the law devolves it upon them, then the doctrine would go to this absurd extent.

How, then, are we to decide *when* the officer's right to exercise his discretion in relation to these lands is to terminate? Clearly there can be but one answer—and that is, *when the lands cease to be a part of the public domain.* Who is to judge when that time arrives? Certainly, not the officer, for his duties are defined and limited by the law; and if that gives him no authority, he does not acquire it by himself adjudging that he possesses it. Neither can they who desire to pre-empt lands—and buy them for a dollar and a quarter an acre after more than that amount has been paid upon them in taxes—be allowed to judge—for if they could, pre-emption rights would at once become at a premium. *The law* decides when any particular lands become severed from the public domain; and the Courts are to determine the question. If a land officer attempts to deal with lands as *public* lands, after they have become private property, he stands in the position of the marshal who holds an execution against the property of one man, and through a mistake in judgment, levies it upon property of another, or upon property exempt from such process. In such cases the officer uses his discretion, but acts at his own peril; if he exceeds his authority he is not protected, but is liable to the party injured.

3 *Wallace*, 334, *Buck* vs. *Colback.*

The language of the Court in *Gaines* vs. *Thompson*, 7 *Wallace* 347, shows *when* the public lands cease to be under the control of the executive officers.

The Court says:

"The numerous cases referred to by the counsel in which this Court—*after the title had passed from the United States, and the matter had ceased to be under the control of the Executive Department*—has sustained the Courts of Justice in decreeing the equitable title to belong to the person against whom the department had decided, are not in conflict with these views; but furnish an additional reason for refusing to interfere with such cases *while they remain under such control.*"

This announces the proposition that when "the title has passed from the United States, the lands cease to be under the control of the Executive Department;" and the Courts refuse to interfere "while they remain under such control." That is to say: *while the title remains in the Government*, the Courts will not interfere with the action of the executive officers—but *after the title has passed*, executive officers have no further control of the lands, and then Courts will interfere when proper cases arise.

It follows, that after "the title" to the lands "had passed from the United States," the defendants as Register and Receiver, ceased to have any official functions as to the lands thus severed from the public domain.

In 4 *Wallace*, 218, Witherspoon v. Duncan, this Court defined the precise time when the title passes from the United States: —"The contract of purchase is complete *when the certificate of entry is executed and delivered:* and *thereafter the land ceases to be a part of the public domain.*" At page 219, the Court says: "But it is insisted that there is a difference between a cash, and a donation entry; that the one is complete when the money is paid, but the other is not perfected until it is confirmed by

the General Land Office, and the patent issued. * * *In either case*, when the entry is made and *certificate given*, the particular land is segregated from the mass of public lands, *and becomes private property*."

The record shows certificates issued for those lands in 1851–1853: And that the acts of transfer thus made by the department were confirmed by Congress by the Joint Resolution of 2d March, 1861, and the act of 12th July, 1862. The Resolution described the lands as those "improperly certified under the Act of 8th August, 1846;" and the Act of 12th July, 1862, described them as "the alternate sections, *designated by odd numbers*," lying above the Raccoon Forks, and within five miles of the Des Moines river. The same Act spoke of the lands "relinquished" by said Resolution as having been thereby "*released to the grantees of the State of Iowa.*" The lands are thus perfectly identified by the Acts of Congress—and the title was thereby vested at once in the State and its grantees. So this Court held in two judgments reported in 5 Wallace, 681–688.

We have already seen that in 23 *Howard*. 66, this Court declared that the Act of 8 August, 1846, was "a direct grant to Iowa in fee," and vested the title at once: and that "no authority was conferred on the executive officers administering the public lands, *to do more than make partition between the tenants in common*, Iowa and the United States, in the manner prescribed in the Act of Congress." This is conclusive upon the questions here involved.

If the Act of 1846, made "a direct grant in fee," and "vested the title at once," then the lands granted by that Act as confirmed and extended by the Acts of 1861 and 1862, were not a part of the public domain in 1869: and the defendants as Land Officers had no right to deal with them as public lands

And if the Act conferred upon the Land Officers "no authority to do more than make partition" in the manner prescribed in the Act, then their duty and authority terminated when partition had been made in the proper manner.

The Act granted the alternate sections—the State selected the odd sections,—and the D partment approved the selection,

and certified the lands to the State. This was the mode prescribed in the Act of Congress, and in this manner partition was made between Iowa and the United States in 1851–1853—and the power of the land officers was thereby exhausted. Congress in 1861 and 1862, confirmed the transaction; and the title was thereby absolutely divested from the United States, and *vested* in the State of Iowa, and its grantees; and thereafter none of the land officers had any duties in relation to those lands—nor any discretion concerning them; nor any right to exercise their judgment about them; or to deal with them as if they were public lands.

The "title had passed from the United States, and the matter had ceased to be under the control of the Executive Department," and within all the principles laid down by this Court in various cases cited, the defendants as Register and Receiver had no authority to deal with the lands longer, nor "any room for the exercise of any judgment, or discretion" in relation to them; the lands could not be "a matter properly before them" for their official action; for they were *private property* with which the defendants, as public officers, had nothing to do.

But it is also to be remembered that the United States are *owners of land*—as well as a political government. In the former capacity they deal in the same manner as individuals. They buy lands by treaties—they hold them for sale like individuals—they sell them; or dispose of them by grants to States or corporations; or by pre-emption, or other entries.

And we submit:

III. *In relation to land sold by the Government, the same remedies* may be employed *by or against* the United States, as owners, as are applicable between private parties (except, of course, that a suit cannot be brought directly against the government, but must be against the agent), and the officers whose duty it is to transfer title to said lands are to be regarded rather as private *agents* than as executive officers, and thereby clothed with immunity from suits in Courts.

(1.) As a *land owner* and *seller of lands*, the Government must be held to the same rules as private parties, otherwise all the land titles in the new States are now, and will remain forever unsettled, dependent upon the *sic volo* of the land officers for the time being.

(2.) In 11 *Howard*, 562, 568, the Court said : " The lands of the United States are held, and subject to be sold * * * * as lands may be held and sold by individual owners, * * and *similar remedies* may be employed by the United States, as owners, that are applicable in the cases of others. This, we think, is manifest. It was so held in the case of *King et al.* vs. *United States*, 3 *How.*, 773."

If the same remedies may be employed *by* the United States it follows that they may be employed *against* the United States, (by proceedings against its agents), otherwise the sellers and the buyers do not stand upon an equality.

(3.) In 2 *Wallace*, 525, *United States* vs. *Stone*, and in 4 *Wallace*, 266, *Hughes* vs. *United States*, this doctrine was applied, in cases of remedies, *by* the United States, where it was held that it was proper for the United States to file a bill to set aside patents for lands which had been improperly issued ; and the Court held that this course was not only proper, but also *necessary;* as in 2 *Wallace*, the Court held, " One officer of the Department cannot annul the act of his predecessor. That is a judicial act, and requires the judgment of a Court."

In other words, when the Government *sells* land, and gives certificates of title, it cannot, by its own power, cancel such certificate ; and then, when suits are brought against its agents for so doing, let them plead that they are executive officers, and are, therefore, above the Court, and exempt from suit. But as private rights have intervened, the Government, like an individual in similar circumstances, must appeal to the Court and cannot cancel its own prior act without judicial sanction.

(4.) The same doctrine seems to have been applied in a case of remedy sought *against* the United States, in 13 *Peters*, 498, *Wilcox* vs. *Jackson*, which was an action of ejectment brought nominally against Wilcox, who was a military officer in command of the military post established on the land, but who claimed no personal interest in the land, but held it for the Government, and under the order of the Secretary of War.

It is clear that the real defendant was the United States; the real and only question was as to the *title* to the land; and the Court entertained jurisdiction, and considered and decided the question of title involved. The report of the case shows, that that suit was commenced in the State Circuit Court of Illinois, and was taken to the Supreme Court of the State which gave judgment against Wilcox—in other words—against the Government.

The report says (p. 508): "To reverse this judgment, this writ of error was sued out *at the instance of the United States, they being the parties interested in the case.*"

It was argued for the Government by the Attorney General, and able associate counsel, and yet there is no intimation in the argument, or in the case, that the Court had not jurisdiction to sustain the suit, and to decide the question *merely* because the defendant was an officer of the United States, acting under orders from the Executive.

In other words, in 13 *Peters*, the Court entertained a suit, and decided it upon its merits, notwithstanding it was brought really against the United States (but, *nominally* against one of its officers); and in a case where the United States still owned the land, and held the absolute title.

Should the Court then hesitate to do the same in this case where the United States has no interest in the land, and does not hold the title? Is the suit to be dismissed *merely* because the defendants are public officers? And in a case where they admit on the record that they are acting without authority?

If an ejectment suit may be brought against a public officer, and the Courts entertain jurisdiction, should they not equally entertain jurisdiction in an injunction suit, if the facts in the case call for that form of process? Can the form of the action determine the jurisdiction of the Court? May an individual be

heard in this Court and permitted to assert and maintain his title to land, as against the Government, when he brings his suit against an officer acting under orders from the Secretary of War, and yet be denied a hearing when the facts in the case require him to bring his suit against another officer acting under orders from the Secretary of the Interior?

We think that the foregoing cases show that in matters relating *to the sale and transfer of lands*, the Government is to be held to the same legal rules as apply to any other land owner; that the same remedies may be employed *by* the United States, or *against* its agents, that are applicable in the case of others; and that in transactions affecting titles to property, the officers who deal with them are to be regarded as agents and not as political or executive officers; and that the offices which they hold do not confer upon them any immunity from suit by injured parties.

IV. Upon general principles, no person, who under color of his office, does an illegal act, is protected by his official character; but he becomes a trespasser, and is liable, in the Courts, to the party injured, in any form of action or proceeding which the case may call for.

In its application to executive officers, this principle was most unequivocally stated by this Court in 1 Cranch., 170, before cited:

"If," said the Court, "one of the Heads of Department commits an illegal act, under color of his office, by which an individual sustains an injury, *it cannot be pretended that his office exempts him from being sued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law*, * * * How then can his office exempt him from *this particular mode of deciding upon the legality of his conduct*, if the case be such a case as would, were any other individual the party complained of authorize the process?" If the Head of Department would not be exempt from suit, how can his subordinates—the land officers—claim such exemption?

The acts of the defendants, as Register and Receiver, are like the acts of any subordinate Court or tribunal; if they act without jurisdiction, their orders are nullities, and they are individually trespassers.

(1.) 1 *Peters*, 328, 340, *Elliott* v. *Perisole*. In this case the Court said: "If a Court act without jurisdiction, its judgments and orders are regarded as nullities. They constitute no justification, and *all persons concerned in executing such judgments or sentences are considered trespassers.*" "If they act without authority, the fact that they are judicial officers is no justification, and in law they are considered as trespassers."

13 *Peters*, 498, *Wilcox* v. *Jackson*. At page 511, the Court say: If Registers and Receivers undertake to grant pre-emptions in land in which the law declares they shall not be granted, then they are acting upon a subject matter clearly not within their jurisdiction."

It follows that in this case where the record shows that the lands were private property, and even if public lands, they were "reserved," pre-emptions, could not be granted in them; and in attempting to do so, the defendants exceeded their authority.

It has already been stated that in 5 *Wallace*, 681, *Wolcott* vs. *Des Moines Company*, this Court decided that all the lands in question had been duly reserved; and this Court has frequently decided that in lands which are "reserved" no pre-emption or other entries can be legally made.

12 *Wheaton*, 586, *Chotard* vs. *Pope*.
13 *Peters*, 498, *Wilcox* vs. *Jackson*.
18 *Howard*, 87, *Minton* vs. *Cromellin*.
18 *Howard*, 18, *Kissell* vs. *St. Louis School*.

Pre-emption acts of Congress, of 20th May, 1830; 14th July, 1832; 22d June, 1838; and 4th Sept., 1841.

(2.) When public officers are proceeding illegally and improperly under a claim of right, Chancery will interfere by injunction.

6 *Paige, Chy. Rep.*, 83, 88.

(3.) So also where public officers claim authority under a statute, but exceed the power conferred by the law.

6 *Paige*, 262, 264. *Oakley* vs. *Trustees*.

The Court said, "If the Trustees have no such power as they have assumed to exercise, then this appears to be a very proper case for the allowance of an injunction to restrain an illegal proceeding."

So in 2 *Johns. Chy.*, 463, *Belknap* v. *Belknap*, which was an injunction against public officers, acting under a statute, who exceeded the powers conferred by the laws. The Court said, "This is not a case of an ordinary trespass impending, but one great and special, leading to lasting mischief, and the destruction of the estate, and tending to multiplicity of suits. *There is no fact in this case to be ascertained. The whole case turns upon the construction of the Act*, and, considering it in the light that I do, the prayer of the bill ought to be granted."

So in the case under consideration, "There is no fact to be ascertained," no fact is disputed. Everything is admitted as alleged in the bill. "The whole case turns upon the construction of the Act" in this case, as it did in the case decided in 2 Johns. Chy., 463.

6 *Johns. Chy.*, 499, *Livingston* v. *Livingston*. In this case the Court granted an injunction (on the ground to prevent multiplicity of suits,) where the title had been decided in *one* action and another was pending.

See also to same point,

2 *Wallace, Jr., Cir. C. Rep.*, 103, *Craft* v. *Lathrop;* Decision of Mr. Justice Grier; 5 *McLean*, 513, *Harmer* v. *Gwinne*, *Story Eq. Juris.*, *sec.* 859.

In the case under consideration as we have already seen, this Court has *twice* decided the title in question to be good, in the cases of Wolcott and Burr, 5 Wallace, 688; and the bill states that other actions to try the title are pending against "a large number of persons," to whom the defendants, as Register and Receiver, have issued certificates.

It may be proper to add that *six* of the aforesaid actions were brought to trial before the United States Circuit Court in Iowa, at the October Term, 1869, and in each of said cases the title relied on by the plaintiff in this suit was sustained by the Court.

(4.) So, where officers are acting under a State law, which is unconstitutional, the Courts will restrain them.

9 *Wheaton*, 738, *Osborne* vs. *U. S. Bank.* Bill filed in Circuit Court of the United States against the Auditor of the State of Ohio, to prevent his collecting a tax imposed by a statute; and thus performing the duty imposed upon him by law.

In that case, the *State* was the real party; as in this case the UNITED STATES is the real defendant; their officers being parties on the record. But the Court granted the injunction, and held

(*a.*) That the State was the real party in interest; that the decision was to affect *the State* and not the officers; and yet, as the State could not be sued, it was not necessary to make the State a party; and the Court would hold jurisdiction against the defendant, and decree as to him.

(*b.*) The fact that the real principal was a sovereign State, and could not be sued, was an additional reason why the injunction should be issued against the agent; for if the agent should collect the money, and pay it over to the State, as the State could not be sued, the party would then be without a remedy.

(*c.*) The Court said: "If the person who is the real principal, the person who is the true source of the mischief, by whose power and for whose advantage it is done, be himself above the law, be himself exempt from judicial process, it would be subversive of the best established principles to say that the Court could not afford the same remedy against the agent employed to do the wrong, which they would afford against him, could the principal be joined in the suit."

(5.) Injunctions, or other actions against *any* public officers are common when they exceed the law, or mistake their duty; and the fact that they hold office and are acting under orders, is no justification. Instances are given as follows:

3 *Howard*, 771, *Ross* vs. *Prentiss*. Was a case of injunction to restrain the Marshal from proceeding to collect a judgment in favor of the United States.

3 *Wallace*, 334, *Buck* vs. *Colback*. Holds that a Marshal executing a writ from a Federal Court may be sued in a State Court for trespass, for his tort, in levying it upon the property of a man against whom the writ did not run, and upon property which was not liable to it.

13 *Howard*, 115, 137, *Mitchel* vs. *Harmony*. Holds that an order by a superior officer to commit a trespass, or to do any unlawful act, is no justification of the inferior officer, when sued for the trespass.

(6.) Reference to additional authorities to show that equity will interfere by injunction where public officers are proceeding illegally and improperly under a claim of right to do any act to the injury of the rights of others.

2 Story, Eq. Juris., sec. 955, a.
5 McLean, Rep., 614, Foot *v.* Linck.
6 Do., 142, Woldey *v.* Dodge.
2 Johns. Chy., 162, Gardner *v.* Trustees of Newburgh.
Hilliard on Injunctions, p. 374.
15 Illinois, 399, Smith *v.* Bangs.

(7.) Also to prevent an act from which a cloud upon the title must necessarily arise.

5 Paige Ch. Rep., 432, Petit *v.* Shepard.
26 Wend., 132, Messerole *v.* Brooklyn City.
2 Ohio, 495, R. R. U. States *v.* Shultz.
5 do., 178, Norton *v.* Beaner *et al.*
3 How, 441–463, Carroll *v.* Safford.

(8.) It is no answer to the demand for an injunction to say that the acts of the defendant are void, and therefore the complainant has a perfect remedy at law; for they tend to cloud the title; and plaintiff should be allowed to try the question in *one* suit, notwithstanding he would have

a perfect legal remedy in *each* suit, if he should bring many of them. So held in

1 Black., 352, Crews *v.* Brucham.
Story Eq. Juris., sec. 901.
6 Paige, 262, 264, Oakley *v.* Trustees.

We submit, therefore, that in the case under consideration, the Court should have entertained jurisdiction, and granted the injunction.

Fifth Point.—It was error in the Court below, to render a final decree, dismissing the bill.

If the Circuit Court had no jurisdiction, the decree dismissing the bill should not have been on the merits, but without prejudice.

In 6 Wallace, 281, Barney *v.* Baltimore City.

The Court held this doctrine, and reversed the decree below on the merits; and entered a decree of dismissal without prejudice.

The motion to dismiss the bill for want of equity is in effect a demurrer to the bill; therefore the complainant says:

Sixth Point.—The only question properly before the Court below, was whether the complainant did not show, *upon the face of his bill* a case for the consideration of a Court of Equity.

The defendants cannot sustain this demurrer by any argument founded upon anything outside of the bill. They are limited to the bill, and its allegations; and if these show a proper case for the consideration of a Court of Equity, then the bill on its face entitles the complainant to relief.

2 *Black*, 219, *Griffing* vs. *Gibb*. In this case it was alleged

by the complainant that he owned certain premises, and that his rights were "illegally, wrongfully, and injuriously affected by the acts of the defendants," and this Court held that the bill, on its face, entitled the complainant to relief. It was also held that the defendant could not sustain a demurrer to such a bill, on the ground that he was justified by an act of the State Legislature.

The Court said: "A demurrer is a denial in form and substance of the plaintiff's right to have his case considered in a Court of Equity, and an admission of all its allegations that are properly pleaded." * * "The only point, in our view of the case, when it was on its hearing in the Court below, was, whether the complainant had not shown, by the facts stated on the face of his bill * * * a case for relief within the jurisdiction of a Court of Equity. We think it to be so," &c, &c.

Upon the face of his bill the complainant certainly alleges enough to show himself entitled to relief in a Court of Equity, as against the defendants—unless they are entitled to go unquestioned, simply from the fact that they are *public officers*, although not discharging the duties of officers while committing the acts complained of.

In attempting to show that this suit cannot be maintained against the defendants, it has been argued that the State Courts and the United States Circuit Court have no power to issue writs of Mandamus to compel Registers and Receivers to make conveyances of public lands. 7 *Cranch.*, 504, *Wood vs. McIntire*, and 6 *Wheaton*, 698, *McClung* vs. *Silliman*, are referred to as sustaining this doctrine; and it is attempted to be inferred that *therefore* they have no power to issue an injunction in any case against such officers.

We think this inference totally unwarranted.

Mandamus is a writ to compel parties to act. Such a writ, directed to Registers and Receivers, requiring them to issue a patent to a certain individual, assumes two things:

(1.) That the title to the land in question is in the United States, and

(2.) That the Court controls the officer's discretion and judgment, by requiring him to convey the land to a certain claimant; when, perhaps, there may be other claimants having a better title.

This could not be done—for, as long as the owner retains the title in himself—(whether the owner be the Government or an individual)—he should have the right to decide between the various parties offering to purchase. But *when the title has once been conveyed*, then the former owner, (whether the Government or an individual) should cease meddling with it. It is not *the form of action*—but *the thing sought to be accomplished*, which must determine whether the Court has power in a given case. Although the Court may not have power by mandamus, to control the executive discretion of officers, and order them *how* to decide in a matter where they have a right to judge for themselves; yet it seems perfectly clear that the same Court may lawfully arrest and try the same individuals for any crime committed by them; and may hold them responsible in the ordinary modes of proceeding for injuries to private rights; and may *restrain* them from committing any illegal act to the prejudice of other parties, and the mere fact that they hold offices will not deprive the Courts of jurisdiction.

We have seen the principle announced by this Court, in 1 Cranch., 137: "If a citizen has a vested right in the subject matter," "and an officer, under color of his office, commits an illegal act, by which the individual sustains injury," such officers "may be sued *in the ordinary modes of proceeding;*" and in 6 *Wallace*, 50, although the Court refused the injunction, it was not because that particular writ was prayed for, but because the case presented was not one involving *private rights* of person or *property*, infringed, or threatened to be infringed.

And the complainant says:

Seventh Point.—The argument that because Courts may not grant Writs of Mandamus to Registers and Receivers, to

compel them to convey title to lands owned by the Government, that *therefore* an injunction cannot be allowed in this case, is entirely inapplicable—for,

I.—In the cases cited, the attempt was made by the mandamus order of the Court, to compel public officers to make conveyance of lands, the title to which was in the Government. Such an order would seek,

(1.) To compel public officers to act, *and to instruct them how to act*—thus clearly controlling their judicial and executive discretion in a matter which the law had confided to their judgment—and being directly opposite to the doctrine of this Court, in 1 Cranch, 137, and in the various other cases which have been cited; for,

(2.) In the case supposed, the title being in the Government, the Executive officers had a right to judge in relation to conveying the title of Government lands; and the Court would not control them by mandamus. But,

II.—In the case at bar, upon the facts stated in the bill, and admitted on the record, the title to the lands is *not* in the Government, but in the complainant; and the defendants, as public officers, have no right to meddle with them, but are acting as trespassers. In other words they are acting as individuals—*pretending* to be officers, but not acting properly as such, and *pretending to have* official authority, while their authority does not permit the acts complained of; and thus sending out papers, apparently clothed with the Government sanction, which unmistakably tend to cloud the complainant's title, and depreciate the value of his property.

The decision of the Court below *assumed* that these defendants are acting by the order of their official superior—the Secretary of the Interior—and that *therefore* they cannot be sued.

We have already seen that this Court has decided, in 13 *Howard*, 115, *Mitchell* vs. *Harmony*, that the order of an

official superior is no justification to an inferior when sued for an illegal act; and in 1 Cranch, 137, the Court said that the head of a department might be sued in the ordinary forms of proceeding for any illegal act. And the defendant cannot set up anything by way of justification, except what is shown on the face of the bill—as this Court held, in 2 *Black.*, 519, *Griffing* vs. *Gibb.*

Eighth Point.—The official action of the Secretary of the Interior, in relation to the very lands in question, shows that *he* holds the title to the lands in controversy to have been transferred from the United States by the Joint Resolution of 2d March, 1861; and that the Government has no right to deal with them as its property.

Consequently it is an error in fact (as well as of no importance in law) to assume that the Secretary of the Interior either orders or approves of these illegal acts of his subordinates.

We refer to two official decisions, affecting two tracts, to illustrate this point.

(1.) A claim by Elisha Speckelmier to pre-empt the N. W. ¼ Sec. 15, Township 84, R. 27, alleging a settlement by him in 1842.

The claim had been allowed by the Land Office, but the Secretary reversed the decision, assigning as the sole reason for his action, that "all the title of the United States had been released to the State of Iowa by the Joint Resolution of 2d March, 1861, and that the land was then held by *bona fide* purchasers under the State."

(2.) The claim of Daniel C. Martz, to enter the N. E. ¼, Sec. 17 Town 80, N. Range, 24 West, alleging a settlement in 1857.

The Land Office rejected the claim, and the Secretary, on appeal, affirmed the decision for the same reason assigned in the case of Speckelmier.

These decisions refer to two of the tracts, in relation to which this injunction was sought, and which tracts appear on the list of lands certified by the Department to the State, under the Acts of the 8th August, 1846, and present the same questions which must arise in every case relating to these certified lands.

(See certified List, p. 13 and 28 of Record).

These decisions are dated 31st December, 1868, and copies are hereto annexed, marked B and C.

They serve two purposes:

First.—To show that the Secretary does *not* order or sanction the illegal acts of the defendants complained of in this suit.

Second,—To illustrate the gross injustice of the course taken by the defendants, and the practical operation of the refusal of the Court below to entertain this suit, and grant an injunction.

These two cases originating in the Land Offices in Iowa, taken up to the General Land Office at Washington, and litigated there, were finally carried by appeal to the Secretary, and after full argument before him, upon voluminous printed briefs, were decided as before stated.

It may be safely said, that the entire value of the tracts of land, the title to which was thus determined by the Secretary, is not equal to the necessary costs and charges attending the litigation of the title before the land officers in Iowa and in Washington.

And yet—unless these illegal acts can be restrained by injunction—we shall be compelled to follow this tedious and expensive process in relation to every quarter section of land which it may please these defendants to offer for sale or preemption as public lands. These lands have been withheld from market for twenty years, and if they can *now* be had by preemption, at the Government price, it is easy to see that they will all be taken; and if the local land officers are permitted to continue this illegal course, and if the complainant, as is contended on the other side, has no remedy except by appeal to

the Land Office and to the Department at Washington, then the property is not worth protecting.

If such is the law—if the citizen is at the mercy of every individual who may happen for the time being to bear the seals of some unimportant office—if the Courts, without plea or answer, are to take judicial notice that such persons are officers, and *therefore* are to be permitted to go on unquestioned in their admittedly illegal acts—if, because the United States once had title to that vast domain out of which the mighty States of the West have been carved, their officers are to be forever permitted to reassert the title of the Government, and assume to deal with the lands as Government property—then it is clear that no title to lands in the Western States can *ever* be considered settled.

By two solemn judgments, after full consideration, this Court, in 5 Wallace, 681, determined that the title upon which the complainant relies was good. These judgments were the close of twenty years of doubt and controversy—at least, the parties whose titles were involved, so understood it—for it has been heretofore deemed that the judgment of the Court of last resort is *final* upon the questions which it decides. But if it is in the power of every subordinate land office to ignore the decisions of this tribunal—to deliberately annul and reverse them, and if the Court will not, by injunction, restrain the commission of such illegal acts, merely because the wrong doer shields himself behind an official title—then the decisions of this Court will have ceased to be final, and the controversy, which we supposed had been closed, will have but just commenced.

It is insisted that we cannot try the questions involved in this one suit; but that we must bring hundreds of actions, each to determine the same legal question; and yet, suppose it done, and suppose that we shall have obtained the judgment of this Court affirming our title in each case—what then? The local land officers may again and again, *ad infinitum*, offer and re-offer our lands for pre-emption, and then, as now, we should be without a remedy. Fortunately, such is not the law—provision has been made for *final* determination of controversies. And as this Court has already twice decided our titles to be good, we trust that it will not permit its decisions to be disre-

garded, and effectually reversed by the subordinate executive officers.

It is said, "If the Courts attempt to control the executive officers in the discharge of their duties, all the litigated business in the departments will be at once drawn into the Courts." This does not state the case as it is.

We do not seek to control the officer while in the proper discharge of his duty—but to restrain him from performing a confessedly illegal act. We do not ask the order of a Court to compel him to act, and to prescribe to him *how* to act, in a matter where he has a right to judge for himself—but we seek the preventive remedy by injunction to arrest the continuance of an admitted wrong.

We do not seek to direct him as to how he shall convey the Government property; but we propose to say to him that he cannot dispose of *private property*. We do not desire to control him in any matter properly before him for his official action; but we would say to him, "you shall not, under color of your official character, invade private rights, and then plead your official position in bar of redress."

There can be but one of two solutions: Either the one hundred thousand subordinate officers of the executive departments must be left free to trespass upon private rights, at their volition, and to plead their official character in bar of all judicial inquiry—or else the Courts, as cases may arise, and when private property is invaded, must stretch out the strong arm of the law to shield the citizen, and to protect him in his rights.

Whether it would be safer to trust in the discretion of an army of office holders, acting upon their own impulses, unregulated by law, and in violation of private rights, or in the educated consciences of equity judges, bound to administer the law as it is, and dealing out even-handed justice between the Government and the citizen, should not take long to decide.

Should this Court determine that the decree below be reversed, the complainant may yet, perhaps, protect his property from trespass, and save it from ruin. If, on the other hand, it is de-

cided that he is without remedy, and holds his rights at the sufferance of an irresponsible and constantly fluctuating body of executive appointees, then he will have failed in this suit, but there will be no especial reason why he individually should complain, for the blow will not be merely personal to him, but will be equally felt by the millions of citizens whose property is held by the same tenure. When such great principles are at stake, they may be safely left to the care of this high tribunal, and to its decision, the complainant confidently submits this case.

EDWIN C. LITCHFIELD,
Of Counsel, in person.

A.

Appendix.

Department of the Interior,
Washington, D. C., March 23d, 1867.

Sir,—I have received your letter of the 15th instant, inviting my attention to the Act entitled, "An Act to quiet title to land in the town of Santa Clara and Petaluma, in the State of California, approved March 1st, 1867," and to the cases you mention of parties who, prior to that date, entered lands within the corporate limits of those towns, as defined in the Act of Incorporation, and made payment to the local officers therefor.

You express the opinion that such cases are not affected by that Act, but that entries so made should be consummated by patent. You submit the question for the decision of the Department.

By the enacting clause, the right *and title* of the United States to the land within such limits, are granted and relinquished to the Corporate authorities in trust, as therein set forth. The proviso declares that the grant "shall not extend to any reservation of the United States, nor prejudice any valid adverse right or claim, if such exist, to said land or any part thereof, nor preclude a judicial investigation, and adjustment thereof."

It does not appear that there is any such reservation, or that any case under that part of the proviso exists.

What, therefore, is the effect of the remainder of the proviso upon the grant? *The grant operates ex proprio vigore as a complete and absolute transfer of the title which the United States had at that date to the lands within such limits.* The parties to whom you refer may have a valid *equitable right* to the tracts entered and paid for, which should be carried into patent, if the title and ownership of the Government had not passed under that act. Such tracts are, however, not excepted from

the grant, but the right of the parties claiming them is not prejudiced. The Corporate authorities take the land *cum onere*, and coupled with the trust, if any, which devolved upon the Government. Their claims are subject to judicial examination and adjudication, and if found to be valid, may be enforced by *proceedings against the authorities in whom the title of the Government is now vested.*

In my opinion, no patents should issue.

I am sir, very respectfully,
Your ob't serv't,
O. H. BROWNING,
Secretary.

Hon. JOSEPH S. WILSON,
Com'r of the Gen'l Land Office.

B.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 31st, 1868.

Sir,—I return the papers which accompanied your letter of the 25th May last, in the case of Elisha Speckelmier, claiming under the pre-emption law the N. W. ¼ Sec. 15, Tp. 84, R. 27, Des Moines, Iowa.

This tract is situate "above the mouth of the Raccoon Fork," "in the State of Iowa," and prior to the passage of the Joint Resolution of March 2d, 1861, had "been certified to said State improperly by the Department of the Interior as a part of the grant by Act of Congress, approved August 8th, 1846," and was then "held by *bona fide* purchasers under the State of Iowa," and the title of the United States, was, by said resolution, relinquished to said State.

Your decision in favor of Speckelmier is therefore reversed.

Very respectfully,
Your ob't serv't,
O. H. BROWNING,
Secretary.

Com'r of the General Land Office.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Dec. 31st, 1868.

Sir,—I have received your letter of the 12th June last, submitting the papers in the case of David C. Martz, involving the right to the N. ½ N. E. ¼ 17, 80, 26, Des Moines, Iowa.

This tract is situate "above the mouth of the Raccoon Fork," "in the State of Iowa," and prior to the passage of the Joint Resolution of March 2d, 1861, had "been certified to said State improperly by the Department of the Interior as a part of the grant by Act of Congress, approved August 8th, 1846," and was "then held by *bona fide* purchasers under the State of Iowa," and the title of the United States was, by said resolution, relinquished to said State.

Your decision adverse to Martz is affirmed, and the papers are herewith returned.

Very respectfully,
Your ob't servant,
O. H. BROWNING,
Secretary.

Hon. JOS WILSON,
Commissioner of the General Land Office.

U. S. SUPREME COURT.

EDWIN C. LITCHFIELD, Appellant,

AGAINST

CHARLES B. RICHARDS, Register, and
CHARLES POMEROY, Receiver, of the United States
Land Office, at Fort Dodge, Iowa, Respondents.

GALUSHA PARSONS, - - - - - - - - - - Resp'ts Att'y,

FORT DODGE, IOWA.

FORT DODGE:
THE FORT DODGE TIMES PUBLISHING HOUSE,
SMELTZER'S BLOCK, MARKET STREET.
1869.

Supreme Court of the United States.

EDWIN C. LITCHFIELD,
Appellant.

AGAINST

CHARLES B. RICHARDS, Register, and CHARLES POMEROY, Receiver, of the United States Land Office, at Fort Dodge, Iowa,
Respondents.

ARGUMENT FOR RESPONDENTS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF IOWA.

This action was brought to restrain the defendants from allowing homestead and pre-emption entries of lands commonly known as the Des Moines River Lands, being the odd sections lying along and within five miles of the Des Moines River, in the counties of Webster, Hamilton and Humboldt, Iowa.

The defendants moved upon bill and answer, to dismiss the bill. The motion was based, principally, upon the following grounds:

1. The proper parties were not before the court.
2. The court had no jurisdiction to restrain the defendants from the discharge of their ordinary official duties.

The motion was granted and a decree entered dismissing the bill.

The plaintiff in behalf of himself and others, claimed title to the

lands in question, under one or all of the following acts of Congress:

1. An act granting certain lands to the territory of Iowa, to aid in the improvement of the Des Moines river in said territory. Passed August 8, 1846.
2. A joint resolution to *quit* title in the State of Iowa. Passed March 2, 1861.
3. An act confirming a land claim in the State of Iowa, and for other purposes. Passed July 12, 1862.

We do not suppose, however, that the motion involved the question of title, or that that question is now before this court.

I.

The proper parties are not before the court.

The defendants have no interest in the subject of the action.

The real parties are,

1. The United States.
2. Persons applying to enter the land, or to "prove up" entries already made.

I understand the law to be,—it is certainly so laid down by elementary writers, and in the books of practice—that no court will perpetuate an injunction without having the real parties in interest before it.

It would hardly be respectful to discuss a question so often before this court. The most recent case in which the law of parties is discussed at any considerable length, is that of Barney vs. the city of Baltimore, 6. Wallace, which it is submitted fully sustains our position in this respect.

II.

The officers of the executive department of the government while acting within their jurisdiction, are not subject to judicial control.

The powers of the judiciary over the other departments of the government have been so recently discussed before this court in cases of the highest national importance, by those eminent both as statesmen and jurists, as to leave neither room nor occasion for those who follow, to do more than to show that their cause falls within the principles which these cases establish.

I understand the jurisdiction of the courts to be marked by the line which distinguishes between acts which are judicial and those which are ministerial,

That,

1. When the duty involves the performance of acts which are judicial in their character, the departments are absolutely independent of each other; that this right of independent action is not confined to the chief magistrate and the heads of the departments, but that it extends to every subordinate employed by them in the discharge of their duties; that so far as duties of this class are concerned, there is no distinction between the President of the United States and the humblest messenger employed by him to "inquire and report."

The very idea of a distinction implies that while the President or a member of his cabinet cannot be restrained from acting, he may still be deprived of the means necessary for his intelligent action.

The duties of the local land officers of the United States, come clearly within this rule. They "hear, try and determine," as every one knows evidence is taken, and trials are, or should be, conducted precisely as in the ordinary courts. Having heard the evidence they decide, and unless appealed from their decision, so far as that department of the government is concerned, is final. It is true that their decision is not like the judgment of a court, conclusive, *where-ever* the same question may arise, but the fact that the rights of the claimants may be fully examined by the courts when a "case" shall arise between "litigant parties," I think is in our favor, rather than—as was claimed in the court below—against us. In this way the Supreme Court is the final and authoritative interpreter of the laws; but it cannot interfere by arresting the proceedings while *in fieri* with a view to a construction of the law. When a "case" shall arise its jurisdiction attaches; "the adjudication upon the rights and duties of the parties is the principal thing, the construction of the law is incidental."

Upon application to the Register, his first duty is to inquire whether the land sought to be entered is public land. This injunction commands him not to make the inquiry, nay, it forbids his *hearing* the application, thus by meeting the proceedings *in limine*, it closes the land office of the United States, and effectually secures to the plaintiff title to the land by declaring that under the pains and penalties of a contempt no one shall ever question his right. As well might this court restrain the Attorney General from the argument of this cause, nor would it be quite clear that the defendants by the retainer of counsel have not subjected themselves to punishment for a contempt.

2. As to ministerial duties:

My understanding of the rule is that where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, that its performance may be compelled by writ of mandamus, and that this court has so held from Marbury vs. Madison, to the present time. But no one can read the masterly *obiter dictum* of Chief Justice Marshall, and the later opinions of this court in Wilcox vs. Jackson, Kendall vs. United States, and Decatur vs. Paulding, and the more recent great *causes celebres* familiar

to laymen as well as to the profession, without perceiving that the court has always felt that in exercising even this control over the other departments of the government, it was occupying delicate ground, and that the subject was not free from difficulty.

Mr. Madison expresses the general opinion of the present as well as of his own time when he says, "No political truth is of greater intrinsic value, or stamped with the authority of more enlightened patrons of liberty, than that the legislative, executive and judiciary departments ought to be separate and distinct, the accumulation of all powers, legislative, executive and judiciary in the same hands, whether of one, a few or many; and whether hereditary, self appointed or elective, may justly be pronounced the very definition of tyranny."

If the judiciary may prohibit the officers of the other departments of the government from investigating any subject properly within the scope of their official duties, if they may remove the inquiry—the trial—from the departments to the courts, they have the power, in the language of one of the most accomplished lawyers that this country has produced, "Not only to stop the wheels of government, but to break the whole machine to pieces, and to put an end to that ideal being, the United States."

The argument in the court below, so far as I was able to understand it, was, that this court by deciding that the performance of a ministerial duty could be judicially enforced, held that it had jurisdiction over the executive department of the government. I so understand the decisions, but I understand all of the cases to make the distinction between *withdrawing* the investigation from the officers of the departments, and enforcing the performance of an act after the investigation has been completed, and it *appears* that the claim of the party is well founded, and nothing remains but the performance of a ministerial duty. The cases relied upon by counsel in the court below—I have had no opportunity of seeing their argument in this court—so far as applicable to the case at all, to the fullest extent and in the clearest manner,—some of them elaborating and explaining quite at large—make this distinction; every one of them so far from intimating that the jurisdiction may be extended to a case like the present, declaring *ex abundanti cautela*—which I understand to mean as if to admonish this plaintiff—that the jurisdiction "hath this extent, no more."

I think the cases establish the following propositions:

1. When one is attempting by color of a public office to do an act not within his jurisdiction, he may be restrained by judicial process.
2. When a specific act, ministerial in its character, is enjoined by law, its performance may be enforced by mandamus.
3. When the jurisdiction in the particular case depends upon certain preliminary proceedings which have not been had, the doing of the final act may be prohibited by injunction.

Only this and nothing more.

We were most sonorously informed, in the court below, that the maxim that The king can do no wrong, expresses no rule of American law. No intelligent Englishman ever understood this maxim to mean

anything more than that the king is exempt from judicial process, and so understood, I can see nothing absurd in applying it to our own chief magistrate; instead of being matter of humiliation I rather think it one of republican pride, that "a President is as good as a King any day." But what it has to do with the questions in this case, I then was, and still am, wholly unable to see, and I beg pardon for introducing it here.

That our government consists of three departments is school boy learning; that to the judiciary belongs the final interpretation of the laws, though not always acquiesced in by statesmen, presidents or people, may be regarded as pretty well established; but that every dissatisfied claimant before the departments may at once *stop progress*, and remove the inquiry from the executive officers, to the judiciary, finds no warrant either in the principles of our government or in the decisions of this court. If in the settlement of claims, the construction of contracts, the disposal of the public domain, and the thousand various matters daily requiring examination and action, in the different offices of the government, "the officers are liable to suit in this form where is the value of the principle which declares that the United States by virtue of their sovereignty are not suable," or———who would care to be president? Scarcely an argument was advanced in the recent great trial of the President of the United States, showing his right of independent action, in the State of Mississippi, vs. Johnson, or the State of Georgia, vs. Stanton, which is not applicable with less force it is true, but in some degree to the defendants in this case. We submit that it is the law of this country, as settled by this court, that the courts have no power to control the performance of the duties of the other departments of the government.

The language of this court in 12 Peters 524 is, "The interference of the courts with the performance of the ordinary duties of the executive department of the government would be productive of nothing but mischief, and this power was never intended to be given to them."

Gaines v Thompson 7 Wall.

GALUSHA PARSONS,
Resp'ts Att'y.

W. H. Kelley
Of Counsel